

Version No. 060
Legal Aid Act 1978
No. 9245 of 1978

Version incorporating amendments as at
1 May 2013

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Version No. 060
Legal Aid Act 1978

No. 9245 of 1978

Version incorporating amendments as at
1 May 2013

An Act to establish a Legal Aid Commission and for
other purposes.

**BE IT ENACTED by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative Council
and the Legislative Assembly of Victoria in this present
Parliament assembled and by the authority of the same as
follows (that is to say):**

1 Short title and commencement

(1) This Act may be cited as the **Legal Aid Act 1978**.

**S. 1(1)
amended by
No. 48/1995
s. 4.**

(2) The several provisions of this Act shall come into
operation on the day or the respective days to be
fixed by proclamation or successive proclamations
of the Governor in Council published in the
Government Gazette.

* * * * *

**S. 1(3)
repealed by
No. 10/1986
s. 4(d).**

PART I—PRELIMINARY

2 Definitions

S. 2
amended by
No. 61/1989
s. 4(a).

- (1) In this Act, unless inconsistent with the context or subject-matter—

S. 2(1) def. of
*alternative
dispute
resolution
program*
inserted by
No. 17/2005
s. 3(a).

alternative dispute resolution program means a program for the resolution of disputes out of court and includes conferencing;

applicant means a person who has made application for legal assistance under this Act;

S. 2(1) def. of
*assisted
person*
amended by
No. 48/1995
s. 5(c).

assisted person means a person to whom legal assistance is provided under this Act, except Part VIA;

S. 2(1) def. of
*Australian
lawyer*
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.1(a)).

Australian lawyer has the same meaning as in the **Legal Profession Act 2004**;

Australian Legal Aid Office means the division of the Attorney-General's Department of the Commonwealth that is designated the Australian Legal Aid Office;

S. 2(1) def. of
board
inserted by
No. 48/1995
s. 5(b).

board means the board of directors of VLA established under section 11;

S. 2(1) def. of
chairman
repealed by
No. 48/1995
s. 5(a).

* * * * *

chairperson means the chairperson of the board;

S. 2(1) def. of *chairperson* inserted by No. 48/1995 s. 5(b).

* * * * *

S. 2(1) def. of *commencing day* repealed by No. 48/1995 s. 5(a).

* * * * *

S. 2(1) def. of *Commission* amended by No. 10/1986 s. 4(c), repealed by No. 48/1995 s. 5(a).

Commonwealth Commission means the Attorney-General's Department of the Commonwealth exercising its functions in respect of legal aid;

S. 2(1) def. of *Commonwealth Commission* amended by No. 48/1995 s. 5(d).

conference chairperson means a person to whom a matter has been referred for conferencing;

S. 2(1) def. of *conference chairperson* inserted by No. 17/2005 s. 3(a).

conferencing means a structured negotiation process in which a conference chairperson assists the parties to a dispute to settle the dispute;

S. 2(1) def. of *conferencing* inserted by No. 17/2005 s. 3(a).

Court includes a tribunal;

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Part I—Preliminary

s. 2

S. 2(1) def. of *current practitioner* inserted by No. 35/1996 s. 453(Sch. 1 item 47.1(a)), amended by No. 102/1997 s. 49(Sch. item 3), repealed by No. 18/2005 s. 18(Sch. 1 item 57.1(b)).

* * * * *

S. 2(1) def. of *Director* repealed by No. 48/1995 s. 5(a).

* * * * *

S. 2(1) def. of *duty lawyer services* amended by No. 18/2005 s. 18(Sch. 1 item 57.1(c)).

duty lawyer services means legal services provided by an Australian lawyer attending a court, being legal services consisting of appearing on behalf of a person or giving legal advice to a person at that court, otherwise than by prior arrangement with the person;

Fund means the Legal Aid Fund established under section 41;

S. 2(1) def. of *incorporated legal practice* inserted by No. 18/2005 s. 18(Sch. 1 item 57.1(a)).

incorporated legal practice has the same meaning as in the **Legal Profession Act 2004**;

S. 2(1) def. of *incorporated practitioner* inserted by No. 35/1996 s. 453(Sch. 1 item 47.1(b)), repealed by No. 18/2005 s. 18(Sch. 1 item 57.1(b)).

* * * * *

independent reviewer means member of the panel of independent reviewers appointed under section 18 and includes the panel chairperson;

S. 2(1) def. of *independent reviewer* inserted by No. 44/1997 s. 17(1)(a).

law practice has the same meaning as in the **Legal Profession Act 2004**;

S. 2(1) def. of *law practice* inserted by No. 18/2005 s. 18(Sch. 1 item 57.1(a)).

legal advice means advice on matters of law given by an Australian lawyer and includes assistance in preparing an application for legal assistance and in furnishing information required for that purpose;

S. 2(1) def. of *legal advice* amended by No. 18/2005 s. 18(Sch. 1 item 57.1(c)).

legal aid means—

- (a) education, advice or information in or about the law;
- (b) any legal services that may be provided by a law practice or an Australian lawyer; and
- (c) any other matter within the scope of section 6, 7 or 8—

S. 2(1) def. of *legal aid* amended by Nos 48/1995 s. 5(e), 17/2005 s. 3(b), 18/2005 s. 18(Sch. 1 item 57.1(d)).

and, without limiting or affecting the generality of the foregoing, includes alternative dispute resolution programs, duty lawyer services, legal advice and legal assistance;

* * * * *

S. 2(1) def. of *legal aid appeal committee* inserted by No. 10/1986 s. 16(a)(i), repealed by No. 44/1997 s. 17(1)(b).

s. 2

S. 2(1) def. of
*legal aid
arrangement*
inserted by
No. 93/1998
s. 13.

legal aid arrangement means an arrangement
with respect to the provision of legal aid
under which—

- (a) the Commonwealth—
 - (i) makes available amounts of
money for the provision of legal
aid; and
 - (ii) specifies the legal aid VLA is to
provide in consideration of those
amounts of money, including any
priorities to be observed by VLA
in providing legal aid as between
classes of persons or classes of
matters; and
- (b) VLA provides that legal aid in
accordance with that arrangement;

S. 2(1) def of
*legal aid
review
committee*
substituted by
No. 10/1986
s. 9(a),
repealed by
No. 44/1997
s. 17(1)(b).

* * * * *

legal assistance means legal services provided
under this Act other than by way of duty
lawyer services or legal advice;

S. 2(1) def. of
*legal
practitioner*
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.1(a)).

legal practitioner means an Australian legal
practitioner within the meaning of the **Legal
Profession Act 2004**;

S. 2(1) def. of
*managing
director*
inserted by
No. 48/1995
s. 5(b).

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

order for costs means a judgment, order, decree, award or direction for payment of the costs of one party to the proceedings by another or others, whether given or made in that proceedings or not;

* * * * *

S. 2(1) def. of *officer of the Commission* repealed by No. 48/1995 s. 5(a).

panel chairperson means chairperson of the panel of independent reviewers appointed under section 18;

S. 2(1) def. of *panel chairperson* inserted by No. 44/1997 s. 17(1)(c).

panel member, in relation to the panel of independent reviewers, includes the panel chairperson;

S. 2(1) def. of *panel member* inserted by No. 44/1997 s. 17(1)(c).

* * * * *

S. 2(1) def. of *practitioner* repealed by No. 18/2005 s. 18(Sch. 1 item 57.1(b)).

prescribed means prescribed by regulations made under this Act;

* * * * *

S. 2(1) def. of *previous committee* repealed by No. 48/1995 s. 5(a).

principal, of a law practice, has the same meaning as in the **Legal Profession Act 2004**;

S. 2(1) def. of *principal* inserted by No. 18/2005 s. 18(Sch. 1 item 57.1(a)).

s. 2

S. 2(1) def. of
*private law
practice*
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.1(a)).

private law practice means a law practice other
than VLA;

S. 2(1) def. of
*private legal
practitioner*
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.1(a)).

private legal practitioner means a legal
practitioner who is not employed by VLA;

S. 2(1) def. of
*private
practitioner*
substituted by
No. 35/1996
s. 453(Sch. 1
item 47.1(c)),
amended by
No. 102/1997
s. 49(Sch.
item 3),
repealed by
No. 18/2005
s. 18(Sch. 1
item 57.1(b)).

* * * * *

S. 2(1) def. of
*professional
association*
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.1(a)).

professional association has the same meaning as
in the **Legal Profession Act 2004**;

S. 2(1) def. of
*Review
Committee*
repealed by
No. 10/1986
s. 16(a)(ii).

* * * * *

S. 2(1) def. of
solicitor
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.1(d)).

* * * * *

the State means the State of Victoria;

VLA means Victoria Legal Aid established under section 3.

S. 2(1) def. of
VLA
inserted by
No. 48/1995
s. 5(b).

(2) It is the intention of Parliament that in this Act *person* includes a body corporate.

S. 2(2)
inserted by
No. 61/1989
s. 4(b).

Pt 2 (Heading and ss 3–12) amended by Nos 10/1986 ss 4(a)(b), 5–7, 8(2), 9(b)(c), 13(2), 20(2)(a)(b), 16/1987 s. 4(3)(Sch. 1 item 13), 38/1992 ss 4–6, 14/1994 ss 3, 4, substituted as Pt 2 (Heading and ss 3–12N) by No. 48/1995 s. 6.

PART II—VICTORIA LEGAL AID¹

S. 3 substituted by No. 48/1995 s. 6.

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.

4 Objectives

The objectives of VLA are—

- (a) to provide legal aid in the most effective, economic and efficient manner;
- (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;
- (d) to pursue innovative means of providing legal aid directed at minimising the need for individual legal services in the community.

S. 4
substituted by
No. 48/1995
s. 6.

5 VLA not to represent the Crown

VLA does not represent the Crown.

S. 5
substituted by
No. 48/1995
s. 6.

6 Functions and powers

(1) The functions of VLA are—

- (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

S. 6
substituted by
No. 48/1995
s. 6.

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 under section 49, provide financial assistance to voluntary legal aid bodies in the State in respect of the provision of legal aid;
- (fa) subject to this Act, enter into legal aid arrangements and provide legal aid in accordance with those arrangements;
- (g) do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

S. 6(2)(f)
amended by
No. 93/1998
s. 16(1)(a).

S. 6(2)(fa)
inserted by
No. 93/1998
s. 16(1)(b).

S. 6(3)
inserted by
No. 55/2009
s. 53,
substituted by
No. 82/2012
s. 163(1).

S. 6(3)(a)
amended by
No. 82/2012
s. 310.

(3) VLA may enter into arrangements to provide legal services—

- (a) on behalf of a prescribed person referred to in section 151 of the **Independent Broad-based Anti-corruption Commission Act**

2011, to applicants for legal assistance under that section;

- (b) on behalf of the Secretary to the Department of Justice, to other persons.
- (4) If an arrangement is entered into under subsection (3)(a), VLA may carry out the functions of the prescribed person under section 82ZI of the **Independent Broad-based Anti-corruption Commission Act 2011**.
S. 6(4) inserted by No. 55/2009 s. 53, amended by No. 82/2012 s. 163(2).
- (5) An arrangement entered into under subsection (3)(b) requires the prior approval of the Attorney-General.
S. 6(5) inserted by No. 55/2009 s. 53.
- (6) Parts V, VI, VIA, VIB and VII do not apply to the provision of legal services under an arrangement entered into under subsection (3).
S. 6(6) inserted by No. 55/2009 s. 53.

7 Duties of VLA

- (1) In performing its functions, VLA must—
S. 7 substituted by No. 48/1995 s. 6, amended by No. 55/2009 s. 54 (ILA s. 39B(1)).
 - (a) ensure that legal aid is provided in the most effective, efficient and economic 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;
 - (c) subject to and in accordance with any legal aid arrangement and the agreements and arrangements made between the Commonwealth and the State under section 49 from time to time—
S. 7(c) amended by No. 93/1998 s. 16(1)(c) (i)–(iii).
 - (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—
 - (A) in or in connection with a claim, right or proceeding involving a matter arising under a law of the Commonwealth; or
 - (B) in a proceeding in a federal court or in a State court exercising federal jurisdiction; or
 - (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 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) subject to any legal aid arrangement, 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 associations and other bodies engaged or interested in the provision of legal aid in the State or elsewhere;

S. 7(d)
amended by
No. 93/1998
s. 16(1)(d).

S. 7(e)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.2(a)).

-
- (f) liaise with professional associations in order to facilitate the use, in appropriate circumstances, of services provided by private legal practitioners;
- (g) make maximum use of services which private legal 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;
- (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.
- (2) VLA must account separately for all money paid under an arrangement entered into under section 6(3) and that money is not payable to the Legal Aid Fund.

S. 7(f)
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.2(b)).

S. 7(g)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.2(c)).

S. 7(2)
inserted by
No. 55/2009
s. 54.

s. 8

S. 8
substituted by
No. 48/1995
s. 6.

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;
- (b) by arranging for the services of private legal practitioners or other persons to be made available;
- (c) by making available and by arranging both the services referred to in paragraphs (a) and (b).

S. 8(1)(b)
amended by
Nos 17/2005
s. 4, 18/2005
s. 18(Sch. 1
item 57.3(a)).

(2) VLA must determine guidelines in relation to the allocation of work between officers of VLA and private legal practitioners having regard to—

- (a) the need for legal assistance services to be readily available and easily accessible to disadvantaged people;
- (ab) the requirements (if any) of any legal aid arrangement;
- (b) the desirability of an assisted person being entitled to select a legal practitioner of his or her choice;

S. 8(2)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.3(a)).

S. 8(2)(ab)
inserted by
No. 93/1998
s. 16(1)(e).

S. 8(2)(b)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.3(b)).

- (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, any legal aid arrangement 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.

S. 9
substituted by
No. 48/1995
s. 6,
amended by
No. 93/1998
s. 16(1)(f).

10 Delegation

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

- (a) a director of VLA;
- (b) an officer of VLA;

S. 10
substituted by
No. 48/1995
s. 6.

s. 11

S. 10(c)
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.4).

(c) a private law practice;

S. 10(d)
substituted by
No. 44/1997
s. 17(2).

(d) an independent reviewer—

S. 10(e)
repealed by
No. 44/1997
s. 17(2).

* * * * *

any power of VLA, other than—

S. 10(f)
amended by
No. 93/1998
s. 16(1)(g).

(f) the powers referred to in sections 7(c)(i)
and (d), 8(2), 9 and 49AA; and

(g) subject to section 12A(c)(ii), this power of
delegation.

S. 11
substituted by
No. 48/1995
s. 6.

11 Board of directors

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

S. 11(a)
amended by
No. 44/1997
s. 13(1)(a).

(a) a chairperson nominated by the Attorney-
General;

S. 11(b)
amended by
No. 44/1997
s. 13(1)(a).

(b) a managing director nominated by the
Attorney-General;

S. 11(c)
substituted by
No. 44/1997
s. 13(1)(b).

(c) 3 directors nominated by the Attorney-
General of whom—

(i) at least one must have experience in
financial management; and

- (ii) at least one must have experience in either business or government operation.

* * * * *

S. 11(d)
repealed by
No. 44/1997
s. 13(1)(b).

12 Role of board

S. 12
substituted by
No. 48/1995
s. 6.

- (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 subsection (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 subsection (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.
- (4) The board must have regard to any legal aid arrangement in carrying out its role under subsections (2) and (3).

S. 12(4)
inserted by
No. 93/1998
s. 16(2).

s. 12A

S. 12A
inserted by
No. 48/1995
s. 6.

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.

S. 12B
inserted by
No. 48/1995
s. 6.

12B Appointment of directors

- (1) The chairperson and other directors of VLA shall be appointed by the Governor in Council.
- (2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director of VLA and the managing director in respect of the office of director and the office of managing director.

S. 12B(2)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 111.1),
80/2006
s. 26(Sch.
item 58.1).

* * * * *

S. 12B(3)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
No. 108/2004
s. 117(1)
(Sch. 3
item 111.1),
repealed by
No. 80/2006
s. 26(Sch.
item 58.1).

12C Terms and conditions of appointment

S. 12C
inserted by
No. 48/1995
s. 6.

- (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
 - (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.
- (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

S. 12D
inserted by
No. 48/1995
s. 6.

- (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

s. 12E

- (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.

S. 12E
inserted by
No. 48/1995
s. 6.

12E Acting chairperson

S. 12E(1)
amended by
No. 44/1997
s. 13(2).

- (1) The Governor in Council may appoint a person nominated by the Attorney-General to act as chairperson—
- (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 duties of his or her office.

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- (2) While so acting, the person appointed under subsection (1) has all the powers and may perform all the functions and duties conferred by this Act or any other Act on the chairperson.
 - (3) An appointment under subsection (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, must not be for a period of more than 12 months.
 - (4) A person appointed under subsection (1) may resign by writing delivered to the Attorney-General for transmission to the Governor in Council.
 - (5) The Governor in Council may at any time terminate an appointment under subsection (1).
 - (6) If a person is acting as chairperson in accordance with subsection (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.

S. 12F
inserted by
No. 48/1995
s. 6.

s. 12G

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- (2) An appointment under subsection (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 subsection (1) for a continuous period of more than 6 months.
- (3) An appointment under subsection (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 subsection (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 Administration Act 2004** (other than Part 3 of that Act) applies to the acting managing director in respect of the office of acting managing director.

S. 12F(5)
substituted by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 111.2),
80/2006
s. 26(Sch.
item 58.2).

S. 12G
inserted by
No. 48/1995
s. 6.

12G Validity of decisions

- (1) An act or decision of the board of VLA is not invalid merely because of—
- (a) a defect or irregularity in, or in connection with, the appointment of a director; or

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- (b) a vacancy in the membership of the board, including a vacancy arising from the failure to appoint an original director.
- (2) Anything done by or in relation to a person purporting to act as chairperson or as a director is not invalid merely because—
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in relation to the appointment; or
 - (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

S. 12H
inserted by
No. 48/1995
s. 6.

- (1) Subject to subsection (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.

s. 12I

S. 12I
inserted by
No. 48/1995
s. 6.

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 subsection (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 subsection (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.

S. 12J
inserted by
No. 48/1995
s. 6.

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
 - (b) the interest could conflict with the proper performance of the director's duties in relation to the consideration of the matter—

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.

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- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting and, unless the board otherwise determines, the director—
- (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.

12K Community consultative committee

S. 12K
inserted by
No. 48/1995
s. 6.

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

s. 12L

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

S. 12L
inserted by
No. 48/1995
s. 6.

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) 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.

S. 12M
inserted by
No. 48/1995
s. 6.

12M Attorney-General may give directions to the board

S. 12M(1)
amended by
No. 44/1997
s. 13(3).

- (1) The Attorney-General may give to the board written directions in relation to—
 - (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;
 - (c) the provision of legal aid by VLA in accordance with a legal aid arrangement.

S. 12M(1)(c)
inserted by
No. 93/1998
s. 14(1).

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- (1A) The Attorney-General may only give a direction under subsection (1)(c) if that direction has been requested in writing by the Commonwealth Attorney-General after the Commonwealth Attorney-General has consulted with the Attorney-General and VLA.
 - (2) A direction under subsection (1) must not relate to the grant of legal aid to any specific person.
 - (3) The board must comply with any direction given under subsection (1).
 - (4) A direction has effect when written notice of the direction is received by the managing director.
 - (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.

S. 12M(1A)
inserted by
No. 93/1998
s. 14(2).

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 subsection (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

S. 12N
inserted by
No. 48/1995
s. 6.

- (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.
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PART III—OFFICERS OF COMMISSION

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Ss 13, 14
repealed by
No. 48/1995
s. 10(a).

15 Officers and employees

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

S. 15(1)
substituted by
No. 48/1995
s. 10(b)(i).

(2) VLA must consult with the Secretary to the Department of Justice on the terms and conditions of employment of officers and employees.

S. 15(2)
substituted by
No. 48/1995
s. 10(b)(i).

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S. 15(2A)
inserted by
No. 10/1986
s. 8(1),
repealed by
No. 48/1995
s. 10(b)(ii).

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S. 15(3)
repealed by
No. 48/1995
s. 10(b)(ii).

(4) VLA, if it is practicable to do so, shall make reciprocal arrangements with other legal aid commissions for the purpose of facilitating the transfer of staff between VLA and any of those other legal aid commissions.

S. 15(4)
amended by
No. 48/1995
s. 10(b)(iii).

16 VLA and its officers are subject to legal professional standards and duties

S. 16
amended by
Nos 61/1989
ss 6, 15(1),
48/1995
s. 10(c)-(g),
35/1996
s. 453(Sch. 1
items 47.2–
47.4),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.5).

(1) VLA or an officer of VLA when engaging in legal practice—

(a) must observe the same rules and standards of professional conduct and ethics as those that a legal practitioner is, by law or a custom of

- the legal profession, required to observe in engaging in legal practice; and
- (b) is subject to the same professional duties as those to which a legal practitioner is subject, by law or a custom of the legal profession, in engaging in legal practice.
- (2) For the purpose of the application of subsection (1) in respect of a member of staff of VLA who is providing legal services to a person—
- (a) VLA is deemed to be a law practice retained by the person to act on the person's behalf; and
- (b) the members of staff of VLA are deemed to be employed by that law practice.
- (3) For the purposes of this section, a reference to engaging in legal practice or providing legal services includes a reference to exercising a right of audience in a court.
- (4) VLA must indemnify an officer of VLA against any negligent act or omission by the officer in the course of the performance of his or her duties or in good faith in the purported performance of those duties.
- (5) Parts 3.3 and 3.6 of the **Legal Profession Act 2004** apply to the VLA as if it were an incorporated legal practice.

S. 17
amended by
Nos 48/1995
s. 10(h),
35/1996
s. 453(Sch. 1
item 47.5).

17 In any proceeding signature of officer of VLA deemed to be signature of legal practitioner for a party to the proceeding

Where in any proceedings a document is required or permitted to be signed by a legal practitioner for a party to the proceedings who is an assisted person, the signature of an officer of VLA authorised by the Board to sign documents on behalf of VLA for the purposes of this section,

Legal Aid Act 1978
No. 9245 of 1978
Part III—Officers of Commission

s. 17

shall be deemed to be the signature of the legal
practitioner for that party.

PART IV—INDEPENDENT REVIEWERS

Pt 4 (Heading)
amended by
No. 10/1986
s. 9(d),
substituted by
No. 44/1997
s. 14.

18 Panel of independent reviewers

S. 18
amended by
Nos 10/1986
s. 9, 48/1995
s. 10(j),
substituted by
No. 44/1997
s. 14.

- (1) The Attorney-General may appoint a panel of independent reviewers for the purposes of this Act consisting of—
 - (a) an eligible person appointed as chairperson of the panel; and
 - (b) as many other eligible persons appointed as members of the panel as are required.
- (2) A person is eligible to be appointed as a panel member if—
 - (a) he or she is not a director of VLA or an officer or employee of VLA; and
 - (b) he or she is a person with knowledge and experience that, in the opinion of the Attorney-General, is relevant to the functions of an independent reviewer.
- (3) A panel member—
 - (a) holds office for the term (not exceeding 3 years) specified in the instrument of appointment;
 - (b) is eligible for re-appointment;
 - (c) is, while acting as an independent reviewer, entitled to be paid the remuneration and allowances (if any) fixed in respect of him or her by the Governor in Council from time to time.

- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a panel member in respect of the office of panel member.

S. 18(4) substituted by Nos 46/1998 s. 7(Sch. 1), 108/2004 s. 117(1) (Sch. 3 item 111.3), 80/2006 s. 26(Sch. item 58.3).

- (5) The Attorney-General may, in the instrument of appointment of a panel member, specify terms and conditions of appointment.
- (6) The Attorney-General may at any time remove a panel member from office.
- (7) A panel member may resign from office by delivering to the Attorney-General a signed letter of resignation.

19 Functions of independent reviewers

- (1) The functions of a member of the panel of independent reviewers are—
- (a) to exercise any powers or carry out any functions delegated to him or her by VLA;
- (b) when appointed by the chairperson of the panel to do so, to review decisions of VLA or of an officer of VLA or of another independent reviewer with respect to—
- (i) refusal to provide legal assistance of the nature or to the extent applied for;
- (ii) the conditions on which legal assistance will be provided;
- (iii) the variation or termination of legal assistance;

S. 19 amended by Nos 10/1986 ss 9(b), 10, 48/1995 s. 10(j)(i)(ii), substituted by No. 44/1997 s. 14.

Legal Aid Act 1978
No. 9245 of 1978
Part IV—Independent Reviewers

s. 19

S. 19(1)(b)(iv)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.6).

(iv) the allocation of work amongst law
practices;

(c) to hear and determine any matter referred to
him or her under section 30;

S. 19(1)(d)
repealed by
No. 93/1998
s. 10(2).

* * * * *

S. 19(1A)
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.7).

(1A) For the purposes of subsection (1), VLA is
deemed to be a law practice.

(2) An independent reviewer may, in the interest of
justice, reconsider any decision that he or she has
made and vary or reverse that decision if he or she
considers it necessary.

S. 19A
inserted by
No. 10/1986
s. 11,
amended by
No. 48/1995
s. 10(k),
repealed by
No. 44/1997
s. 14.

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S. 20
amended by
Nos 10/1986
ss 9(b), 14(2),
61/1989 s. 7,
48/1995
s. 10(k),
repealed by
No. 44/1997
s. 14.

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S. 21
amended by
No. 10/1986
s. 9(b),
repealed by
No. 44/1997
s. 14.

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No. 9245 of 1978
Part IV—Independent Reviewers

s. 22

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S. 22
amended by
No. 10/1986
s. 9(b),
repealed by
No. 44/1997
s. 14.

PART V—PROVISION OF LEGAL ASSISTANCE

23 Applications for legal assistance

S. 23(1)
amended by
No. 61/1989
s. 8 (as
amended by
No. 48/1995
s. 11(7)(a)).

(1) An application for legal assistance, other than legal assistance of a class prescribed as exempted from the provisions of this subsection, shall be in writing in or to the like effect of the form approved by VLA.

(2) An application for legal assistance may be lodged at or posted to—

S. 23(2)(a)
amended by
No. 48/1995
s. 10(l).

(a) any office of VLA; or

S. 23(2)(b)
substituted by
No. 57/1989
s. 3(Sch.
item 115.1(a)).

(b) a venue of the Magistrates' Court.

S. 23(3)
amended by
Nos 57/1989
s. 3(Sch. item
115.1(b)),
48/1995
s. 10(l).

(3) An application lodged at or posted to a venue of the Magistrates' Court must be forwarded immediately to VLA or as VLA may from time to time direct.

S. 23(4)
amended by
No. 48/1995
s. 10(l).

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

S. 23(5)
amended by
No. 48/1995
s. 10(l).

(5) An applicant for legal assistance shall furnish to VLA such information and such declarations and other documents as VLA requires for the purpose of enabling a decision to be made as to whether legal assistance should be granted in respect of the application.

24 Circumstances in which legal assistance may be provided

(1) VLA may provide legal assistance to a person if—

S. 24(1)
amended by
No. 48/1995
s. 10(m)(i).

(a) in its opinion the person is in need of that legal assistance by reason that he is unable to afford the full cost of obtaining from a private legal practitioner the legal services in respect of which the legal assistance is sought; and

S. 24(1)(a)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.8(a)).

(b) it is reasonable having regard to all relevant matters to provide the legal assistance.

(2) In the making of a decision whether legal assistance shall be provided to a person charged with—

S. 24(2)
amended by
No. 48/1995
s. 10(m)(i).

(a) an indictable offence;

(b) a summary offence in circumstances where the person could have been proceeded against for the same offence by indictment; or

(c) an indictable offence which by consent has ceased to be indictable—

if VLA is of opinion that it is desirable in the interests of justice that the person should have legal representation, regard shall be had only to the matters referred to in paragraph (a) of subsection (1).

(2A) In the making of a decision whether legal assistance is to be provided to a person who is subject to a supervision order under Part 5 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (including a person who is deemed to be subject to a custodial supervision

S. 24(2A)
inserted by
No. 93/1998
s. 4.

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No. 9245 of 1978
Part V—Provision of Legal Assistance

s. 24

order by force of clause 2 of Schedule 3 to that Act) in relation to any proceeding under that Act with respect to that supervision order, VLA is to have regard only to the matters referred to in subsection (1)(b).

S. 24(3)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.8(b)).

(3) In the making of a decision whether a person is in need of legal assistance by reason that he is unable to afford the full cost of obtaining from private legal practitioners the legal services in respect of which the legal assistance is sought, regard shall be had to all relevant matters, including the following matters—

- (a) the income of the person;
- (b) the cash that is readily available to the person or can be made so available;
- (c) the debts, liabilities and other financial obligations of the person;
- (d) the cost of living in the locality in which the person resides;
- (e) the cost of obtaining the legal services from private legal practitioners; and
- (f) any other matters affecting the ability of the person to meet the full cost of obtaining the legal services from private legal practitioners—

S. 24(3)(e)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.8(b)).

S. 24(3)(f)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.8(b)).

but, without limiting the generality of the preceding provision of this section—

S. 24(3)(f)(i)
repealed by
No. 10/1986
s. 12(a).

* * * * *

- (ii) the assets and financial circumstances of a person who is involved only in a representative, fiduciary or official capacity—

shall not be taken into account as affecting the ability of the person to meet the cost of obtaining the legal services from private legal practitioners.

- (4) In the making of a decision whether it is reasonable in all the circumstances to provide legal assistance to a person, regard shall be had to all relevant matters, including—
 - (a) the nature and extent of any benefit that may accrue to the person, to the public or to any section of the public from the provision of the assistance or of any detriment that may be suffered by the person, by the public or by any section of the public if the assistance is not provided;
 - (b) in the case of assistance in relation to a proceeding in a court other than a criminal appeal—whether the proceeding is likely to terminate in a manner favourable to the person; and
 - (c) in the case of assistance in relation to a criminal appeal—whether there are reasonable grounds for the appeal.
- (5) Except where a reciprocal arrangement is made pursuant to section 7(e) with another legal aid commission, legal assistance shall not be provided under this Act to a person who is not ordinarily resident in the State unless the assistance relates to—
 - (a) a proceeding in a court in the State; or
 - (b) a matter arising under the law in force in the State.

S. 24(5)
amended by
No. 48/1995
s. 10(m)(ii).

- (6) Legal assistance shall not be provided under this Act to a person in or in connexion with a review under Part VI.
- (7) This section is subject to any legal aid arrangement.

S. 24(7)
repealed by
No. 10/1986
s. 12(b),
new s. 24(7)
inserted by
No. 93/1998
s. 16(3).

25 Legal assistance may be provided notwithstanding that the interests of the assisted person are adverse to the State or the Commonwealth

Legal assistance may be provided under this Act to a person in relation to any matter notwithstanding that the interests of that person are, or may be, adverse to the interests of the State or the Commonwealth, the interests of an authority or body established for a public purpose by a law of the State or the Commonwealth or the interests of an incorporated company in which the State, the Commonwealth or such an authority or body has an interest.

26 Certain legal aid provided without charge

- (1) Legal aid provided under this Act by way of—
- (a) duty lawyer services; or
 - (b) legal advice—
- shall, subject to subsection (2), be provided without charge.
- (2) Where legal advice is being provided to a person under this Act and it appears to an officer of VLA or a private legal practitioner that the legal advice required by the person is likely to be of a substantial or continuing nature, the officer or private legal practitioner may require the person to make an application for legal assistance in

S. 26(2)
amended by
Nos 48/1995
s. 10(n),
18/2005
s. 18(Sch. 1
item 57.9
(a)(b)).

accordance with section 23, and where such a requirement is made subsections (1) and (4) of that section and sections 24, 27 and 33 shall apply to the application.

27 Conditions

- (1) The granting under this Act of an application by a person for legal assistance, other than legal assistance to which section 26(1) applies, may be on the basis that the assistance will be provided without charge or may be subject to all or any of the following conditions—
- (a) a condition that the person pays to VLA or as directed by VLA a contribution of a specified amount or an amount to be specified towards the cost to VLA of providing the assistance and that the person is or may be required to pay interest on the specified amount or amount to be specified, upon any terms and conditions determined by VLA; and
- (b) a condition that the person makes a payment or payments to VLA or as directed by VLA in respect of any out-of-pocket expenses incurred, or to be incurred, by VLA in providing the assistance and that the person is or may be required to pay interest on the payment or payments incurred or to be incurred, upon any terms and conditions determined by VLA; and
- (c) a condition that the cost or part of the cost, and any interest payable on the whole or the part of the cost to VLA of providing assistance be secured—
- S. 27(1) amended by No. 10/1986 s. 13(1)(a).
- S. 27(1)(a) amended by Nos 38/1992 s. 7(a)(i)(ii), 48/1995 s. 10(o).
- S. 27(1)(b) amended by Nos 38/1992 s. 7(b)(i)(ii), 48/1995 s. 10(o).
- S. 27(1)(c) inserted by No. 10/1986 s. 13(1)(b), amended by Nos 38/1992 s. 7(c), 48/1995 s. 10(o).

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S. 27(1)(c)(i)
amended by
No. 38/1992
s. 10(3).

(i) by a charge under section 47A(1) over any land or a charge over any other property which is recovered or preserved for that person in the proceedings; or

S. 27(1)(c)(ii)
amended by
Nos 48/1995
s. 10(o),
76/2001 s. 3.

(ii) in any other manner VLA thinks fit over any property, whether land or any other property, in which the person has an interest or in which the person acquires an interest during the period of assistance.

S. 27(1A)
inserted by
No. 10/1986
s. 13(1)(c),
amended by
No. 48/1995
s. 10(o).

(1A) VLA must advise the applicant in writing before imposing any condition under subsection (1)(c) on the provision of legal assistance.

S. 27(1B)
inserted by
No. 38/1992
s. 7(d),
amended by
No. 48/1995
s. 10(o).

(1B) VLA may not impose a condition under subsection (1) requiring a person to pay a rate of interest which exceeds 70% of the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.

S. 27(1C)
inserted by
No. 38/1992
s. 7(d),
amended by
No. 48/1995
s. 10(o).

(1C) If VLA has imposed a condition under subsection (1) requiring a person to pay interest on any amount payable to VLA, interest must not accrue until 30 days after VLA has communicated to the assisted person under section 33—

- (a) its decision to impose a condition requiring the payment of the amount; and
- (b) its decision to impose the condition requiring the payment of interest.

-
- (1D) If communication of one decision to impose a condition is given at a different time from the other, interest must not accrue until 30 days after the later communication. **S. 27(1D) inserted by No. 38/1992 s. 7(d).**
- (2) An amount required to be paid by an assisted person under this section shall be paid or secured in such manner and within such time as VLA directs. **S. 27(2) amended by Nos 10/1986 s. 13(1)(d), 48/1995 s. 10(o).**
- (3) If a person who is or has been an assisted person has not paid an amount payable by him to VLA under this section, the amount is recoverable by VLA by action in a court of competent jurisdiction as a debt due and payable to VLA. **S. 27(3) amended by No. 48/1995 s. 10(o).**
- (4) All money paid by persons in accordance with a condition imposed under subsection (1) on account of costs or out-of-pocket expenses in advance of legal assistance to be provided by VLA—
- (a) is not required to be treated as trust money within the meaning of the **Legal Profession Act 2004**, despite anything to the contrary in that Act; and **S. 27(4) inserted by No. 93/1998 s. 5.**
- (b) must be paid into the Fund. **S. 27(4)(a) amended by No. 18/2005 s. 18(Sch. 1 item 57.10).**

27A Refund of money paid in accordance with section 27

If a person has paid money in accordance with a condition imposed under section 27 on account of costs or out-of-pocket expenses in advance of legal assistance to be provided by VLA and that assistance is not provided, VLA must refund to that person any unexpended part of that money out of the Fund.

S. 27A inserted by No. 93/1998 s. 6.

s. 28

S. 28
amended by
Nos 10/1986
s. 9(b),
48/1995
s. 10(p)(i)(ii),
44/1997
s. 17(3).

S. 28(a)
amended by
Nos 48/1995
s. 10(p)(i),
18/2005
s. 18(Sch. 1
item 57.11).

S. 28(c)
amended by
No. 10/1986
s. 13(2).

28 Decisions relating to the provision of legal services

Where a decision is made to provide legal assistance under this Act, VLA or the independent reviewer (as the case may be) shall also decide in accordance with guidelines determined by VLA in pursuance of sections 8 and 9—

- (a) whether the legal assistance should be provided by making available the services of a private legal practitioner, whether the legal assistance should be provided by making available the services of an officer of VLA or whether both such services should be provided;
- (b) the nature and extent of the legal assistance to be provided; and
- (c) whether the legal assistance is to be provided without charge or subject to all or any of the conditions referred to in section 27(1).

29 Variation of a decision to provide legal assistance

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

- (a) terminate the provision of legal assistance;
- (b) alter the nature or extent of the legal assistance (including the variation of a decision relating to the person or persons who will provide legal services);
- (c) make the provision of the legal assistance subject to conditions; or
- (d) alter a condition to which the provision of the legal assistance is subject.

29A Practitioner panels

S. 29A
inserted by
No. 44/1997
s. 19.

(1) VLA may establish different panels for—

S. 29A(1)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(a)).

(a) different classes of matters in relation to
which legal assistance may be provided
under this Act; or

(b) different parts of the State—

and may determine the conditions subject to
which a private law practice or private legal
practitioner may be included on any such panel.

(2) If VLA proposes to establish a panel under
subsection (1) or include additional names on an
established panel, it must, by notice published in a
daily newspaper circulating generally throughout
Victoria or in the relevant part of the State (as the
case requires), invite expressions of interest from
private law practices or private legal practitioners
in having their names included on the panel.

S. 29A(2)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(b)).

(3) A notice under subsection (2)—

(a) must be published not later than 21 days
before the panel is established by VLA or
any additional name included on it, as the
case requires; and

(b) must specify—

(i) the qualifications and experience that a
private law practice or private legal
practitioner included on the panel must
have or the part of the State within
which their principal place of practice
must be located; and

S. 29A(3)(b)(i)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(c)).

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S. 29A(3)(b)(ii)
amended by
Nos 18/2005
s. 18(Sch. 1
item 57.12(c)),
53/2007 s. 22.

- (ii) the period (not exceeding 5 years) during which a private law practice or private legal practitioner may be included on the panel; and

S. 29A(3)(b)(iii)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(c)).

- (iii) the basis on which payment will be made to any private law practice or private legal practitioner included on the panel for services performed as a panel member on behalf of an assisted person; and
- (iv) performance standards in relation to the provision of services by panel members; and
- (v) requirements with respect to the making of reports to VLA and the keeping of records that must be complied with by panel members in respect of the performance of services on behalf of assisted persons; and

S. 29A(3)(b)
(vi)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(c)).

- (vi) the grounds on which, and process by which, a private law practice or private legal practitioner may be removed from the panel.

S. 29A(4)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(d)).

- (4) The name of a private law practice or private legal practitioner may be included on a panel whether or not their name is also included on a referral panel under section 30 or on another panel established under this section.

S. 29A(5)
amended by
No. 18/2005
s. 18(Sch. 1
item 57.12(d)).

- (5) A private law practice or private legal practitioner may be re-included on a panel after the expiry of the period for which they were included.

s. 29B

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- (6) A private law practice or private legal practitioner may, by writing to VLA, request that their name be removed from a panel and VLA must comply with that request. **S. 29A(6) amended by No. 18/2005 s. 18(Sch. 1 item 57.12(d)).**
- (7) If the name of a private law practice is included on a panel, the names of all the private legal practitioners who are partners, directors or employees of the private law practice are deemed to be included on the panel. **S. 29A(7) substituted by No. 18/2005 s. 18(Sch. 1 item 57.13).**
- * * * * *
- S. 29A(8) repealed by No. 18/2005 s. 18(Sch. 1 item 57.13).**

29B Assignment of case to practitioner panel

S. 29B inserted by No. 44/1997 s. 19.

- (1) VLA may assign the conduct of an assisted person's case to a private law practice or private legal practitioner included on a panel established under section 29A. **S. 29B(1) amended by No. 18/2005 s. 18(Sch. 1 item 57.14).**
- (2) If VLA assigns a case as mentioned in subsection (1), VLA must, on behalf of the assisted person, select a private law practice or private legal practitioner from the names on the panel. **S. 29B(2) amended by No. 18/2005 s. 18(Sch. 1 item 57.14).**

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30 Selection of practitioner²

S. 30
substituted by
No. 10/1986
s. 14(1).

S. 30(1)
substituted by
No. 14/1994
s. 5,
amended by
Nos 48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item 47.6(a)),
44/1997
s. 20(1),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.15).

- (1) If—
- (a) legal services are to be performed on behalf of an assisted person by a private legal practitioner; and
 - (b) VLA has not assigned the conduct of the assisted person's case to a private legal practitioner chosen after VLA called for tenders to conduct the case; and
 - (c) VLA has not under section 29B assigned the conduct of the assisted person's case to a private law practice or private legal practitioner included on a panel established under section 29A—

the assisted person is entitled to select a private law practice from the names on a referral panel.

S. 30(2)
amended by
Nos 48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item 47.6(a)),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.15).

- (2) If an assisted person does not wish to exercise the right to select a private law practice under subsection (1), VLA must, on that person's behalf, select a private law practice from the names on a referral panel.

S. 30(3)
amended by
Nos 48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item 47.6(a)
(b)),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.15).

- (3) In selecting a private law practice under subsection (2), the paramount consideration is the interests of the assisted person but, subject to that consideration, VLA must allocate work equitably amongst the private law practices named on referral panels.

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- (4) A private law practice may apply to VLA for inclusion on a referral panel.
- S. 30(4) amended by Nos 61/1989 s. 9(1)(a), 48/1995 s. 10(q)(ii), 35/1996 s. 453(Sch. 1 item 47.6(a)(c)), substituted by Nos 93/1998 s. 7, 18/2005 s. 18(Sch. 1 item 57.15).
- (5) A private law practice is not eligible to apply under subsection (4) during any period—
- S. 30(5) amended by Nos 48/1995 s. 10(q)(ii), 35/1996 s. 453(Sch. 1 item 47.6(d)(i)(ii)), substituted by Nos 93/1998 s. 7, 18/2005 s. 18(Sch. 1 item 57.15).
- (a) for which the private law practice is disqualified from applying in accordance with this section; or
- (b) of removal under subsection (10) or (11).
- (6) On receiving an application under subsection (4), VLA may—
- S. 30(6) amended by No. 35/1996 s. 453(Sch. 1 item 47.6(a)(e)), substituted by Nos 93/1998 s. 7, 18/2005 s. 18(Sch. 1 item 57.15).
- (a) accept the application and include the name of the private law practice on a referral panel; or
- (b) subject to subsection (14), refuse the application and may disqualify the private law practice from making another application under subsection (4) for a specified period.
- (7) VLA must prepare and maintain panels of names of private law practices from the names of the private law practices that have applied under subsection (4) and been accepted for inclusion.
- S. 30(7) amended by No. 44/1997 s. 20(2), substituted by Nos 93/1998 s. 7, 18/2005 s. 18(Sch. 1 item 57.15).

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S. 30(8)
amended by
Nos 61/1989
s. 9(1)(f)(i)(ii),
48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item 47.6(a)
(f)(i)(ii),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.15).

- (8) If the name of a private law practice is included on a referral panel, the names of all the private legal practitioners who are partners, directors or employees of the private law practice are, by force of this subsection, also included on the panel, except the name of any of those legal practitioners that has been removed under this section.

S. 30(9)
amended by
Nos 61/1989
s. 9(1)(g),
48/1995
s. 10(q)(ii)(iii),
35/1996
s. 453(Sch. 1
item 47.6(a)
(g)(h)),
substituted by
No. 93/1998
s. 7.

- (9) If the name of a sole practitioner is included on a referral panel, the names of all the practitioners who are employed by the sole practitioner are, by force of this subsection, also included on the panel, except the name of any of those practitioners employed by the sole practitioner which has been removed under this section.

S. 30(9A)
inserted by
No. 61/1989
s. 9(1)(h),
amended by
No. 35/1996
s. 453(Sch. 1
item 47.6(i)),
repealed by
No. 93/1998
s. 7.

* * * * *

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- (10) Subject to subsection (15), VLA may remove from a referral panel for a specified period the name of—
- (a) any private law practice; or
 - (b) any private legal practitioner who is a partner, director or employee of a private law practice.
- (11) Without limiting VLA's powers to refuse an application made under subsection (4) or remove a name from a referral panel, VLA may—
- (a) refuse an application made under subsection (4) or remove from a referral panel the name of a private law practice if the name of a private legal practitioner who is a partner, director or employee of the private law practice is removed from the panel;
 - (b) remove from a referral panel the name of any private law practice that habitually takes an excessive time to defend persons charged with criminal offences.
- (12) VLA may amend a referral panel—
- (a) to remove the name of any private law practice that, or private legal practitioner who, has ceased to practise; or
 - (b) to record any change in name of a private law practice or private legal practitioner; or
 - (c) to remove a name in accordance with a request under subsection (13).
- S. 30(10)**
amended by
Nos 61/1989
s. 9(1)(i),
48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item
47.6(j)(i)(ii),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.16).
- S. 30(11)**
amended by
Nos 61/1989
s. 9(1)(j),
35/1996
s. 453(Sch. 1
item
47.6(a)(k)),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.16).
- S. 30(12)**
amended by
Nos 57/1989
s. 3(Sch. item
115.2),
61/1989
s. 9(1)(k),
48/1995
s. 10(q)(ii),
44/1997
s. 17(4)(a),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.16).

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S. 30(13)
amended by
No. 44/1997
s. 17(4)(b)(i)(ii),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.16).

- (13) A private law practice or a private legal practitioner may, by writing to VLA, request that their name be removed from a referral panel and VLA must comply with that request.

S. 30(14)
amended by
Nos 48/1995
s. 10(q)(ii),
44/1997
s. 17(4)(c)(i)(ii),
substituted by
No. 93/1998
s. 7.

- (14) Before refusing an application made under subsection (4), VLA must—
- (a) give written notice to the applicant setting out—
 - (i) the reasons for the proposed refusal; and
 - (ii) the period of any proposed disqualification; and
 - (b) afford the applicant a reasonable opportunity to be heard and show cause why the application should not be refused or the disqualification should not be made.

S. 30(15)
amended by
Nos 61/1989
s. 9(1)(l),
48/1995
s. 10(q)(ii),
35/1996
s. 453(Sch. 1
item 47.6(l)),
44/1997
s. 17(4)(d),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.17).

- (15) Before removing a name from a referral panel under subsection (10) or (11), VLA must—
- (a) give written notice to the private law practice or private legal practitioner concerned setting out the reasons for the proposed removal; and
 - (b) afford them a reasonable opportunity to be heard and show cause why the removal should not be made.

S. 30(16)
amended by
No. 44/1997
s. 17(4)(e)(i)(ii),
substituted by
Nos 93/1998
s. 7, 18/2005
s. 18(Sch. 1
item 57.17).

- (16) A notice given to a private law practice under subsection (14) or (15) may be given to any principal of the practice.

-
- (16A) If a person wishes to be heard in accordance with subsection (14) or (15), the panel chairperson must appoint an independent reviewer to hear and determine the matter of the refusal, removal or disqualification. **S. 30(16A) inserted by No. 93/1998 s. 7.**
- (16B) Subject to this Act and the regulations (if any), in hearing and determining a matter under this section the reviewer— **S. 30(16B) inserted by No. 93/1998 s. 7.**
- (a) may consider any relevant matters as grounds for removal, refusal or disqualification and is not limited to consideration of the grounds set out in the notice provided by VLA under subsection (14)(a) or (15)(a);
 - (b) may—
 - (i) confirm, vary or refuse to confirm the proposed removal, refusal or disqualification; or
 - (ii) substitute his or her own determination for the proposed removal, refusal or disqualification—and make a determination accordingly;
 - (c) may regulate his or her own proceedings.
- (16C) The independent reviewer must determine a matter under this section as expeditiously as possible after the end of the hearing. **S. 30(16C) inserted by No. 93/1998 s. 7.**
- (16D) After hearing the matter, the independent reviewer must advise VLA of his or her determination. **S. 30(16D) inserted by No. 93/1998 s. 7.**
- (16E) An independent reviewer must keep records of his or her determinations and proceedings under this section. **S. 30(16E) inserted by No. 93/1998 s. 7.**
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S. 30(16F)
inserted by
No. 93/1998
s. 7,
amended by
No. 18/2005
s. 18(Sch. 1
item 57.18).

(16F) VLA must give notice of its decision under subsection (6)(b), (10) or (11) or the determination of the independent reviewer under subsection (16A) to the private law practice or private legal practitioner concerned.

S. 30(17)
amended by
Nos 48/1995
s. 10(q)(i)(ii),
44/1997
s. 15(1).

(17) An action does not lie against any director of the board any officer or employee of VLA or any member of a legal aid review committee on account of any proceedings taken or thing said or done in the course of or in relation to any proceedings or hearing under this section before the commencement of section 17(4) of the **Law and Justice Legislation Amendment Act 1997** or, in the case of a member of a legal aid review committee, after that commencement in accordance with section 51.

S. 30(17A)
inserted by
No. 44/1997
s. 15(2).

(17A) A director or officer or employee of VLA or an independent reviewer is not personally liable for anything done or omitted to be done in good faith after the commencement of section 17(4) of the **Law and Justice Legislation Amendment Act 1997**—

- (a) in the exercise of a power or the discharge of a duty under this section; or
- (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this section.

S. 30(17B)
inserted by
No. 44/1997
s. 15(2).

(17B) Any liability resulting from an act or omission that would, but for subsection (17A), attach to a director or officer or employee of VLA or to an independent reviewer attaches instead to VLA.

(18) A decision of VLA or a determination of an independent reviewer under this section is final and not subject to appeal.

S. 30(18) amended by Nos 61/1989 s. 9(1)(m), 35/1996 s. 453(Sch. 1 item 47.6(m)), substituted by No. 93/1998 s. 8.

(18A) Nothing in subsection (18) prevents the taking of proceedings—

S. 30(18A) inserted by No. 93/1998 s. 8

(a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto or the grant of a declaration or an injunction; or

(b) seeking any order under the **Administrative Law Act 1978**—

in respect of any decision of VLA or determination of an independent reviewer under this section.

(19) In this section—

* * * * *

S. 30(19) def. of *firm of solicitors* substituted by No. 61/1989 s. 9(1)(n), substituted by def. of *firm* by No. 35/1996 s. 453(Sch. 1 item 47.6(n)(i)), repealed by No. 18/2005 s. 18(Sch. 1 item 57.19(a)).

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S. 30(19)
def. of
*participating
employee*
inserted by
No. 61/1989
s. 9(1)(n),
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.6(n)
(ii)).

* * * * *

S. 30(19) def.
of *referral
panel*
amended by
No. 18/2005
s. 18(Sch. 1
item 57.19(b)).

referral panel means a panel prepared under
subsection (7);

S. 30(19) def.
of *sole
practitioner*
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.6(n)
(ii)).

* * * * *

S. 30A
inserted by
No. 93/1998
s. 9.

30A Immunity of participants

In a proceeding before an independent reviewer
under section 30—

- (a) a person representing a party has the same protection and immunity as a legal practitioner has in a proceeding in the Supreme Court; and
- (b) a party to the proceeding has the same protection and immunity as a party to a proceeding has in a proceeding in the Supreme Court; and
- (c) a person appearing as a witness has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

31 Relationship between legal practitioner and client

- (1) Subject to subsection (3), the relationship, and any privilege arising out of the relationship, between legal practitioner and client is not, and the rights of any of them are not, affected by the disclosure of information or the circumstances of a private legal practitioner giving his or her services in pursuance of this Act.
- (2) Subject to subsection (3), the like privileges as those that arise from the relationship of client and legal practitioner acting in his professional capacity and in the course of his professional employment shall arise between an applicant or an assisted person and VLA or a legal practitioner who is an officer of VLA when VLA or that officer practises as, or performs any of the functions of, the legal practitioner for the applicant or assisted person in pursuance of this Act.
- (3) A relevant person in relation to an assisted person must disclose to VLA, an officer of VLA or an independent reviewer any information that is within the relevant person's knowledge or to which the relevant person has access that is required by VLA, the officer or the independent reviewer for the purposes of performing functions under this Act and that—
- (a) is relevant to the provision of services by way of legal assistance to the assisted person; or
 - (b) concerns the progress and disposal of the matter.

S. 31(1)
amended by
Nos 10/1986
s. 15(a),
61/1989
s. 10(a)(i)(ii),
35/1996
s. 453(Sch. 1
item 47.7(a)),
18/2005
s. 18(Sch. 1
item 57.20(a)).

S. 31(2)
amended by
Nos 10/1986
s. 15(b),
48/1995
s. 10(r)(i)(ii),
35/1996
s. 453(Sch. 1
item 47.7(b)),
18/2005
s. 18(Sch. 1
item 57.20(b)).

S. 31(3)
amended by
Nos 10/1986
ss 9(b), 15(c),
16(b), 48/1995
s. 10(r)(ii),
44/1997
s. 17(5)(a)(b),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.21).

s. 32

S. 31(4)
inserted by
No. 10/1986
s. 15(d),
repealed by
No. 61/1989
s. 10(b), new
s. 31(4)
inserted by
No. 18/2005
s. 18(Sch. 1
item 57.21).

(4) In subsection (3)—

relevant person, in relation to an assisted person,
means—

- (a) a private law practice that has been selected to perform, is performing, or has performed, services for the assisted person in respect of any matter; or
- (b) a private legal practitioner who is or was a partner, director or employee of that private law practice.

32 Private legal practitioner to demand, take or accept payment allowed by the Act

S. 32(1)
amended by
No. 10/1986
s. 17(a),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.22).

(1) If a private legal practitioner performs or has performed legal services on behalf of an assisted person, he or she must not demand, take or accept any payment for performing those services other than the payment to which the private law practice of which he or she is a principal or employee is entitled under this Act.

Penalty: 50 penalty units or imprisonment for 6 months.

S. 32(2)
amended by
No. 10/1986
s. 17(b)(i)(ii)
substituted by
Nos 61/1989
s. 11, 38/1992
s. 8,
amended by
Nos 48/1995
s. 10(s),
93/1998
s. 16(1)(h)(i),
18/2005
s. 18(Sch. 1
item 57.23(a)).

(2) Subject to any legal aid arrangement, VLA may determine scales of payments to be made to private law practices for the performance of services on behalf of assisted persons.

-
- (2A) The payment to be made to a private law practice for the performance of services on behalf of assisted persons is—
- (a) the amount payable under any applicable scale determined pursuant to subsection (2); or
- (b) in any matter for which an applicable scale has not been determined, an amount determined by VLA.
- (2B) VLA must consult the Legal Services Board and any professional associations that VLA considers it appropriate to consult, before making a determination under subsection (2).
- (2BA) Despite anything to the contrary in this Act and subject to any legal aid arrangement, VLA may—
- (a) determine a limit on the total amount of payments which may be made to a private law practice under this Act for a class of matter or different classes of matters; and
- S. 32(2A) inserted by No. 10/1986 s. 17(c), substituted by Nos 61/1989 s. 11, 38/1992 s. 8, amended by No. 18/2005 s. 18(Sch. 1 item 57.23(b)).
- S. 32(2A)(b) amended by No. 48/1995 s. 10(s).
- S. 32(2B) inserted by No. 10/1986 s. 17(c), repealed by No. 61/1989 s. 11, new s. 32(2B) inserted by No. 38/1992 s. 8, amended by Nos 48/1995 s. 10(s), 35/1996 s. 453(Sch. 1 item 47.8), 18/2005 s. 18(Sch. 1 item 57.23(c)).
- S. 32(2BA) inserted by No. 44/1997 s. 18(1), amended by Nos 93/1998 s. 16(1)(h)(ii), 18/2005 s. 18(Sch. 1 item 57.23(d)).
- S. 32(2BA)(a) amended by No. 18/2005 s. 18(Sch. 1 item 57.23(d)).

s. 33

(b) vary (whether by increasing or reducing the amount of a limit) or revoke a determination under paragraph (a)—

and a private law practice is not entitled to any payment in respect of such a matter in excess of a limit determined and in force under this subsection.

S. 32(2C)
inserted by
No. 38/1992
s. 8,
amended by
Nos 48/1995
s. 10(s),
18/2005
s. 18(Sch. 1
item 57.23(d)).

(2C) Despite subsection (2A), VLA may enter into an agreement with a private law practice to undertake work on behalf of an assisted person for payments which are different from those determined by VLA.

S. 32(3)
amended by
Nos 48/1995
s. 10(s),
18/2005
s. 18(Sch. 1
item 57.23(e)).

(3) On the application of the assisted person or VLA the bill of costs relating to the performance of those services shall be reviewed in accordance with Part 3.4 of the **Legal Profession Act 2004**.

33 Statement of reasons for a decision to be given

S. 33(1)
amended by
Nos 10/1986
s. 9(b),
48/1995
s. 10(s),
44/1997
s. 17(6).

(1) Where a decision in relation to the provision of legal assistance or in relation to the making of any payment in respect of costs, including a decision reconsidering or reviewing a previous decision, is made by VLA or by an independent reviewer under this Act, VLA—

- (a) within fourteen days after the decision is made, shall communicate the decision to the person who applied for the legal assistance or for the payment, as the case may be; and
- (b) in the case where the decision is a decision refusing to provide legal assistance or imposing a condition on the provision of legal assistance, shall, if requested to do so, cause to be furnished to the person a short statement of the reasons for the decision.

(2) The communication to a person of a decision referred to in subsection (1) shall be effected—

(a) in a case where the matter to which the decision relates was dealt with on behalf of the person by a private legal practitioner— by giving to the private legal practitioner, or by sending to the private legal practitioner by post to the address of the private legal practitioner last known to VLA, a document setting out the terms of the decision and particulars of the right of the person to have the decision reconsidered and reviewed in accordance with Part VI; and

S. 33(2)(a)
amended by
Nos 48/1995
s. 10(s),
18/2005
s. 18(Sch. 1
item 57.24).

(b) in any other case—by giving such a document to the person or by sending such a document to the person—

(i) by post to the address of the person last known to VLA; or

S. 33(2)(b)(i)
amended by
No. 48/1995
s. 10(s).

(ii) in any other way authorized by the person.

**PART VI—RECONSIDERATION AND REVIEW OF
DECISIONS: COMPLAINTS**

**34 Reconsideration of decisions of VLA and
independent reviewer**

S. 34(1)
amended by
Nos 10/1986
ss 9(b), 18(a),
14/1994
s. 6(a),
48/1995
s. 10(t)(i)(ii),
44/1997
ss 17(6), 21.

- (1) A person affected by a decision of VLA or an officer of VLA or an independent reviewer or a delegate of VLA with respect to the provision of legal assistance may within the time fixed by VLA (being not less than 7 days after the date of the decision) request reconsideration of the decision.

S. 34(1A)
inserted by
No. 61/1989
s. 12(1) (as
amended by
Nos 48/1995
s. 11(7)(b),
44/1997 s. 25),
amended by
No. 68/2009
s. 97(Sch.
item 76.1).

- (1A) VLA may waive or extend the time fixed by it in a particular case except where the request for reconsideration relates to a criminal trial, criminal hearing or criminal appeal in the Supreme Court or the County Court.

S. 34(2)
amended by
Nos 10/1986
s. 9(b),
14/1994
s. 6(b),
48/1995
s. 10(t)(i)(ii),
44/1997
s. 17(7).

- (2) Upon receipt of a request under subsection (1), VLA or an officer of VLA or the independent reviewer (as the case may be) shall reconsider the decision and may confirm vary or reverse the decision.

35 Review of decisions of VLA

- (1) A person who has made a request under section 34(1) in respect of a decision of VLA or an officer or delegate of VLA and who is dissatisfied with the result of the reconsideration may apply in writing to VLA within the time fixed by VLA (being not less than 7 days after the date of the decision) for the review of the matter by an independent reviewer.
- (1A) VLA may waive or extend the time fixed by it in a particular case except where the request for review relates to a criminal trial, criminal hearing or criminal appeal in the Supreme Court or the County Court.
- (2) Upon receipt of an application under subsection (1), the panel chairperson must appoint an independent reviewer to review the matter and that reviewer may confirm vary or reverse any decision.
- (2A) An independent reviewer—
- (a) must review only the actual decision referred to him or her for review; and
- (b) in reviewing a decision must comply with and give effect to this Act, any legal aid arrangement and the determinations of VLA.
- S. 35(1) amended by Nos 10/1986 ss 9(b), 18(b), 14/1994 s. 6(c), 48/1995 s. 10(v)(i)(ii), 44/1997 ss 17(8), 21.
- S. 35(1A) inserted by No. 61/1989 s. 12(2) (as amended by Nos 48/1995 s. 11(7)(b), 44/1997 s. 25), amended by No. 68/2009 s. 97(Sch. item 76.2).
- S. 35(2) amended by Nos 10/1986 s. 9(b), 48/1995 s. 10(v)(i), 44/1997 s. 17(9)(a)(b).
- S. 35(2A) inserted by No. 10/1986 s. 18(c), amended by No. 44/1997 s. 17(10)(a).
- S. 35(2A)(a) amended by No. 44/1997 s. 17(10)(b).
- S. 35(2A)(b) amended by Nos 48/1995 s. 10(v)(i), 93/1998 s. 16(1)(i).

s. 36

S. 35(3)
amended by
Nos 10/1986
s. 9(b),
44/1997
s. 17(11).

- (3) The decision of an independent reviewer under this section is final and conclusive.

36 Review of decisions of independent reviewer

S. 36(1)
amended by
Nos 10/1986
ss 9(b), 16(b),
18(d), 48/1995
s. 10(x)(i),
44/1997
ss 17(12)
(a)(b), 21.

- (1) A person who has made a request under section 34(1) in respect of a decision of an independent reviewer and who is dissatisfied with the result of the reconsideration may apply in writing to VLA within the time fixed by VLA (being not less than 7 days after the date of the decision) for the review of the matter by another independent reviewer.

S. 36(1A)
inserted by
No. 61/1989
s. 12(3) (as
amended by
Nos 48/1995
s. 11(7)(b),
44/1997 s. 25)
amended by
No. 68/2009
s. 97(Sch.
item 76.3).

- (1A) VLA may waive or extend the time fixed by it in a particular case except where the request for review relates to a criminal trial, criminal hearing or criminal appeal in the Supreme Court or the County Court.

S. 36(2)
amended by
Nos 10/1986
s. 16(b),
48/1995
s. 10(x)(i),
44/1997
s. 17(13)(a)(b).

- (2) Upon receipt of an application under subsection (1), the panel chairperson shall appoint another independent reviewer to review the matter and that reviewer may confirm vary or reverse any decision.

S. 36(2A)
inserted by
No. 10/1986
s. 18(e),
amended by
No. 44/1997
s. 17(14)(a).

- (2A) An independent reviewer appointed under this section—

S. 36(2A)(a)
amended by
No. 44/1997
s. 17(14)(b).

- (a) must review only the actual decision referred to him or her for review; and

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- (b) in reviewing a decision must comply with and give effect to this Act, any legal aid arrangement and the determinations of VLA.
- (3) The decision of an independent reviewer under this section is final and conclusive.
- (4) An independent reviewer must cause notice of his or her decision under this section to be sent to VLA and to the person who requested the review and shall, if so requested by that person, cause a short term statement in writing of the reasons for the decision to be sent to him.
- (5) In this section and sections 34 and 35 *decision* means—
- (a) a decision refusing to provide legal assistance under this Act;
 - (b) a decision refusing to provide legal assistance under this Act of the nature or to the extent applied for other than a decision giving effect to a determination under section 32(2) or 32(2BA);
 - (c) a decision imposing a condition on the provision of legal assistance under this Act or varying adversely to an assisted person a condition so imposed; or
 - (d) a decision to terminate or vary the provision of legal assistance; or
 - (e) a decision of VLA under section 48.
- S. 36(2A)(b) amended by Nos 48/1995 s. 10(x)(i), 93/1998 s. 16(1)(j).
- S. 36(3) amended by Nos 10/1986 s. 16(b), 44/1997 s. 17(15).
- S. 36(4) amended by Nos 10/1986 s. 16(b), 48/1995 s. 10(x)(i), 44/1997 s. 17(16).
- S. 36(5) amended by No. 10/1986 s. 18(f).
- S. 36(5)(b) amended by No. 44/1997 s. 18(2).
- S. 36(5)(e) inserted by No. 10/1986 s. 18(f), amended by No. 48/1995 s. 10(x)(i).

s. 37

37 Conflicts of interest

An independent reviewer who has a personal interest (whether pecuniary or otherwise) in a matter which could conflict with the proper performance of his or her duties in relation to the matter, must not exercise any power or carry out any function in relation to that matter at any time after becoming aware of the conflict of interest.

S. 37
amended by
No. 10/1986
ss 9(b), 16(b),
substituted by
No. 44/1997
s. 16.

S. 38
amended by
Nos 10/1986
s. 16(b)(c),
48/1995
s. 10(y)(i)–(iii),
repealed by
No. 44/1997
s. 17(17).

S. 39
amended by
Nos 10/1986
ss 9(c), 16(b),
14/1994
s. 6(d),
48/1995
s. 10(z),
repealed by
No. 44/1997
s. 17(17).

S. 40
amended by
Nos 10/1986
s. 9(b),
14/1994 s.
6(e), 48/1995
s. 10(z),
44/1997
s. 17(18)(a)(b)
(i)(ii),
repealed by
No. 93/1998
s. 10(1).

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PART VIA—LAW AID SCHEME

Pt 6A
(Heading and
ss 40A–40G)
inserted by
No. 48/1995
s. 7.

40A Definitions

S. 40A
inserted by
No. 48/1995
s. 7.

In this Part—

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

committee means the Law Aid Committee to be established under the trust deed;

funding agreement means the Law Aid Funding Agreement entered or to be entered into by the Attorney-General, the Law Institute of Victoria and the Victorian Bar Council in connection with the establishment of the Law Aid Scheme;

S. 40A def. of
*funding
agreement*
inserted by
No. 22/1996
s. 14.

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;

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

s. 40B

S. 40B
inserted by
No. 48/1995
s. 7.

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.

S. 40C
inserted by
No. 48/1995
s. 7.

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 subsection (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.

S. 40D
inserted by
No. 48/1995
s. 7.

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.

S. 40D(2)–(4)
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.9).

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S. 40E
inserted by
No. 48/1995
s. 7,
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.10).

40F Certain information not to be revealed

S. 40F
inserted by
No. 48/1995
s. 7,
amended by
No. 18/2005
s. 18(Sch. 1
item 57.25).

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 legal practitioner and client.

40G Recovery of costs

S. 40G
inserted by
No. 48/1995
s. 7.

- (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.

s. 40G

(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 subsection (2) all rights and remedies in relation to the recovery of the costs referred to in that subsection which that person would be entitled to exercise if the person were not an assisted person.

(4) If—

- (a) a person is liable to pay costs payable under this section to the trustees; and
- (b) the trustees or the legal practitioner acting for the assisted person gives notice to the person referred to in paragraph (a), or the legal practitioner acting for that person, of the rights of the trustees in relation to the costs—

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 legal practitioner for the assisted person.

(5) On the assessment of costs payable to an assisted person under the terms of—

- (a) a judgment or order; or

S. 40G(4)
amended by
No. 35/1996
s. 453(Sch. 1
item 47.11).

S. 40G(4)(b)
amended by
No. 35/1996
s. 453(Sch. 1
item 47.11).

S. 40G(5)
amended by
No. 35/1996
s. 453(Sch. 1
item 47.12).

(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 assessment.

40H Grant to trust fund

In accordance with the funding agreement, there shall be granted to the Law Institute of Victoria and the Victorian Bar Council an amount determined by the Attorney-General, to be applied in accordance with the funding agreement.

**S. 40H
inserted by
No. 22/1996
s. 15.**

s. 40I

PART VIB—ALTERNATIVE DISPUTE RESOLUTION

Pt 6B
(Heading and
ss 40I–40M)
inserted by
No. 17/2005
s. 5.

40I Alternative dispute resolution programs

S. 40I
inserted by
No. 17/2005
s. 5.

- (1) VLA may provide an alternative dispute resolution program to the following—
 - (a) persons who have applied to VLA for legal assistance, whether or not the application for legal assistance is successful; or
 - (b) persons who have not applied to VLA for legal assistance but have been referred to VLA to engage in an alternative dispute resolution program.
- (2) An alternative dispute resolution program may be provided—
 - (a) by officers or employees of VLA; or
 - (b) by persons or bodies with expertise in the area of alternative dispute resolution that are engaged by VLA specifically to conduct an alternative dispute resolution program.

40J Confidentiality

S. 40J
inserted by
No. 17/2005
s. 5.

- (1) In this section—

relevant person means—

 - (a) an officer or employee of VLA;
 - (b) a conference chairperson or other person or body employed or engaged in the conduct of an alternative dispute resolution program.

-
- (2) A party, or a person representing a party, to an alternative dispute resolution program must not, except in accordance with subsection (4) and section 40L(2), give to any other person or body, including a court, information acquired in the course of, or otherwise in connection with, the conduct of an alternative dispute resolution program.

Penalty: 60 penalty units.

- (3) A relevant person must not, except in accordance with subsection (4) or (5), give to any other person or body, including a court, information acquired in the course of, or otherwise in connection with, the conduct of an alternative dispute resolution program.

Penalty: 60 penalty units.

- (4) Subsections (2) and (3) do not apply where a party, or a person representing a party, or a relevant person gives, whether voluntarily or at the request of VLA, the information to VLA to fulfil its functions and duties, and for the administration of VLA generally.
- (5) Subsection (3) does not apply where VLA has given its consent to a relevant person, and the relevant person gives the information to another person or body in the following circumstances—
- (a) the person from whom the information was originally obtained has consented to giving it; or
 - (b) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or damage to property; or
 - (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or

s. 40K

- (d) if the information is required for referring a party to any person, agency, organisation or other body, and the disclosure is made with the consent of the party, for aiding in the resolution of a dispute or assisting the party in any other matter; or
 - (e) the information is connected with a proceeding founded on fraud alleged to be connected with, or to have happened during, an alternative dispute resolution program.
- (6) Nothing in this section limits or affects the operation of section 43.

S. 40K
inserted by
No. 17/2005
s. 5.

40K Freedom of Information Act 1982

- (1) A document which contains information acquired in the course of, or otherwise in connection with, the conduct of an alternative dispute resolution program under this Act is an exempt document within the meaning of section 38 of the **Freedom of Information Act 1982**.
- (2) Subsection (1) does not limit the operation of section 38 of the **Freedom of Information Act 1982**.

S. 40L
inserted by
No. 17/2005
s. 5.

40L Admissibility of evidence

- (1) The following is not admissible in evidence in any court or legal proceeding—
 - (a) anything said at or during the course of;
 - (b) any admission or agreement made at or during the course of;
 - (c) any document prepared for the purposes of, or in the course of, or as a result of—
an alternative dispute resolution program.

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- (2) Subsection (1) does not apply in the following circumstances—
- (a) if all the parties to an alternative dispute resolution program and VLA consent to the admission of the evidence or document;
 - (b) if the parties to an alternative dispute resolution program have created any—
 - (i) note; or
 - (ii) record; or
 - (iii) minute of orders—
signed by the parties for the express purpose of submitting it to a court, for admission in evidence;
 - (c) if there are reasonable grounds to believe that the admission of the evidence or document is necessary to prevent or minimise the danger of injury to a person or damage to property.

40M Immunity for conference chairpersons

S. 40M
inserted by
No. 17/2005
s. 5.

- (1) A conference chairperson is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the capacity of conference chairperson under this Act; or
 - (b) in the reasonable belief that the thing was done or omitted to be done in the capacity of conference chairperson under this Act.
 - (2) Any liability that would, but for subsection (1), attach to a conference chairperson, attaches instead to VLA.
-

s. 41

PART VII—FINANCIAL

41 Legal Aid Fund

S. 41(1)
amended by
No. 48/1995
s. 10(za)(iii).

(1) There shall be established a Fund to be controlled and administered by VLA and known as the Legal Aid Fund.

(2) Into the Legal Aid Fund shall be paid—

(a) all moneys made available by the State and the Commonwealth or by one or other of them for the purposes of legal aid;

S. 41(2)(b)
substituted by
No. 35/1996
s. 453(Sch. 1
item 47.13(a)),
amended by
No. 18/2005
s. 18(Sch. 1
item 57.26(a)).

(b) all amounts payable to the fund under section 6.7.9 of the **Legal Profession Act 2004**;

S. 41(2)(ba)
inserted by
No. 9697 s. 4,
repealed by
No. 35/1996
s. 453(Sch. 1
item 47.13(b)).

* * * * *

S. 41(2)(c)
amended by
No. 48/1995
s. 10(za)(iii).

(c) any moneys paid to VLA pursuant to the provisions of the **Appeals Costs Fund Act 1964**;

S. 41(2)(d)
amended by
Nos 61/1989
s. 15(2),
48/1995
s. 10(za)(iii),
35/1996
s. 453(Sch. 1
item 47.13(c)),
18/2005
s. 18(Sch. 1
item 57.26(b)).

(d) all moneys, other than money required to be paid into a trust account by section 3.3.13 of the **Legal Profession Act 2004**, paid to VLA by assisted persons;

(e) income derived from the investment of moneys forming part of the Fund;

-
- (f) costs payable to VLA under section 46; S. 41(2)(f)
amended by
No. 48/1995
s. 10(za)(iii).
- (g) any amount standing at the commencement
of this Part to the credit of the Legal Aid
Fund established under section 10 of the
Legal Aid Act 1969; and
- (h) any other moneys paid to VLA for the
purposes of the provision of legal assistance
or otherwise for the purposes of the Fund. S. 41(2)(h)
amended by
No. 48/1995
s. 10(za)(iii).
- (3) Out of the Fund shall be paid—
- (a) amounts payable in or in connexion with the
provision of legal aid;
- (b) the remuneration and allowances of the
directors of the board, the acting chairperson
and acting managing director, the members
of the community consultative committee
and independent reviewers; S. 41(3)(b)
substituted by
No. 10/1986
s. 19(b),
amended by
Nos 48/1995
s. 10(za)(i),
44/1997
s. 17(19).
- (c) the administrative costs and expenses
incurred by VLA in the provision of legal
assistance including—
- (i) the costs and expenses of providing
premises and equipment; and
- (ii) salaries and wages and other payments
to or in respect of the members of the
staff of VLA; and S. 41(3)(c)
amended by
No. 48/1995
s. 10(za)(iii).
- (d) such other amounts as are necessary in order
that VLA may properly exercise and perform
its powers functions and duties under this
Act. S. 41(3)(d)
amended by
No. 48/1995
s. 10(za)(iii).

Legal Aid Act 1978
No. 9245 of 1978
Part VII—Financial

s. 41

S. 41(4)
amended by
No. 48/1995
s. 10(za)(iii).

(4) Subject to the approval of the Treasurer VLA may from time to time invest such portion of the Fund as is not immediately required for the purposes of this Act in such a manner as it thinks fit.

S. 41(5)
inserted by
No. 10/1986
s. 19(a).

(5) The Treasurer may advance from the Public Account any moneys required during the course of a financial year to meet payments out of the Fund pending the payment into the Fund of the moneys referred to in subsection (2)(b).

S. 41(6)
inserted by
No. 10/1986
s. 19(a).

(6) All moneys advanced to the Fund under subsection (5) must be repaid to the Public Account in the same financial year in which the moneys were advanced.

S. 41(7)(8)
inserted by
No. 61/1989
s. 15(3),
repealed by
No. 48/1995
s. 10(za)(iv).

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S. 42
substituted by
No. 10/1986
s. 20(1),
repealed by
No. 31/1994
s. 4(Sch. 2
item 47).

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PART VIII—MISCELLANEOUS

43 Officers etc. of VLA not to reveal any information without consent of VLA

- (1) A director of the board or a member of the community consultative committee or an independent reviewer or an officer of VLA shall not without the consent of VLA—
- (a) produce in a court any document received by VLA or any officer of VLA or by an independent reviewer in relation to an application for legal assistance or the provision of legal assistance; or
- (b) communicate or permit to be communicated to any person other than the legal practitioner acting for the assisted person or give in evidence in a court any information received by VLA or any officer of VLA or by an independent reviewer in relation to an application for legal assistance or the provision of legal assistance.
- Penalty: 25 penalty units or imprisonment for 6 months.
- (2) A court shall not have power to compel any director of the board or a member of the community consultative committee or an independent reviewer or any officer of VLA to produce any such document or communicate or give in evidence any such information unless VLA, the applicant for legal assistance or the assisted person has consented to that production or communication.

S. 43(1) amended by Nos 10/1986 ss 9(b), 16(b), 61/1989 s. 13(1), 14/1994 s. 7(1), 48/1995 s. 10(zb)(i)(ii), 44/1997 s. 17(20)(a).

S. 43(1)(a) amended by Nos 48/1995 s. 10(zb)(ii), 44/1997 s. 17(20)(b).

S. 43(1)(b) amended by Nos 48/1995 s. 10(zb)(ii), 35/1996 s. 453(Sch. 1 item 47.14(a)), 44/1997 s. 17(20)(b).

S. 43(2) amended by Nos 10/1986 ss 9(b), 16(b), 61/1989 s. 13(2), 48/1995 s. 10(zc)(i)(ii), 44/1997 s. 17(21).

s. 44

S. 43(3)
inserted by
No. 14/1994
s. 7(2),
amended by
No. 48/1995
s. 10(zd)(i)(ii).

- (3) Subsections (1) and (2) also apply to a delegate of VLA and to any person employed by a delegate as if a reference to a director of the board was a reference to the delegate or person.

S. 43(4)
inserted by
No. 14/1994
s. 7(2),
amended by
Nos 48/1995
s. 10(ze),
35/1996
s. 453(Sch. 1
item 47.14(b)),
substituted by
No. 18/2005
s. 18(Sch. 1
item 57.27).

- (4) If VLA calls for tenders to conduct a case, a private law practice that, or private legal practitioner who, is supplied with any information about the case by VLA, and any person who is a partner, director or employee of such a private law practice, must not without the consent of VLA—
- (a) communicate or permit to be communicated to any person, or give in evidence in a court, any of that information; or
 - (b) produce in a court any document received from VLA in relation to the case.

Penalty: 25 penalty units or imprisonment for 6 months.

S. 43(5)
inserted by
No. 14/1994
s. 7(2),
amended by
Nos 48/1995
s. 10(ze),
18/2005
s. 18(Sch. 1
item 57.28).

- (5) A court does not have the power to compel any private law practice or partner, director or employee of a private law practice to communicate, or give in evidence, any such information or to produce any such document unless VLA, or the person on whose behalf the case is being (or was) conducted, has consented to the communication or production.

S. 44
amended by
No. 9945
s. 3(1)(Sch. 1
item 34),
substituted by
No. 10/1986
s. 21.

44 False statements

- (1) A person who in or in connexion with an application for legal assistance or the provision of legal assistance under this Act—
- (a) knowingly makes a false statement; or
 - (b) supplies information that person knows to be false; or

(c) fails to disclose information which that person knows to be relevant to the application or to the provision of legal assistance—

is guilty of an offence.

Penalty: 25 penalty units or imprisonment for six months.

(2) Despite anything to the contrary in any Act, proceedings for any offence against this section may be brought within the period of three years after the commission of the alleged offence, or with the consent of the Director of Public Prosecutions, at any later time.

45 Court may order a person convicted of offence under section 44 to pay an amount to VLA

- (1) Where an assisted person is convicted for an offence against section 44 the court convicting him may order him to pay to VLA a sum equal to the expenses incurred under this Act on his behalf less any moneys paid by the assisted person or recovered by VLA for or towards his expenses.
- (2) Any sum ordered under this section to be paid by the assisted person shall be deemed in all respects to be a judgment for a civil debt and may be entered for the purposes of execution in any court of competent jurisdiction.

S. 45(1)
amended by
No. 48/1995
s. 10(zf).

46 Legal costs

- (1) A court may make in favour of an assisted person any such order for costs as it may make in favour of a person who is not an assisted person notwithstanding that 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.

Legal Aid Act 1978
No. 9245 of 1978
Part VIII—Miscellaneous

s. 46

S. 46(2)
amended by
No. 48/1995
s. 10(zf).

(2) All costs payable under the terms of any judgment or order or of any settlement of an action or claim to a person who has been assisted under this Act in the obtaining of such judgment order or settlement (except any portion of such costs as may be for services rendered or disbursements paid for that person before he was so assisted) shall be payable to VLA which shall be entitled to exercise in the name of that person all rights and remedies in relation to the recovery of such costs which that person would be entitled to exercise if he were not an assisted person.

S. 46(3)
amended by
Nos 48/1995
s. 10(zf),
35/1996
s. 453(Sch. 1
item 47.15).

(3) A person who is liable to pay any costs payable under this section to VLA and to whose legal practitioner notice in writing of the rights of VLA in relation thereto has been given by VLA or the legal practitioner who obtained the judgment order or settlement for the assisted person shall not be discharged from his liability by reason only of his making any payment in respect thereof to any person other than VLA or such legal practitioner.

S. 46(4)
amended by
No. 44/1997
s. 24.

(4) On the assessment of costs payable under the terms of any judgment or order or of any settlement of an action or claim to an assisted person no item thereof shall be disallowed merely because the assisted person is by reason of his being an assisted person under no obligation to pay in whole or in part 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 thereof has not been paid prior to the assessment.

47 Costs to be paid to the Fund

- (1) All costs received or recovered which are payable to VLA under section 46 and all moneys paid by assisted persons towards costs in accordance with any terms or conditions imposed by VLA or an independent reviewer shall be paid to the Fund. **S. 47(1) amended by Nos 10/1986 s. 9(b), 48/1995 s. 10(zf), 44/1997 s. 17(22).**
- (2) Where the costs paid in any matter to VLA and all moneys, other than interest, paid by the assisted person in respect of that matter together exceed the amount which in the opinion of VLA would if the assisted person was not an assisted person be properly chargeable to him for costs as between solicitor and client in that matter the amount of the excess shall be paid to the assisted person. **S. 47(2) amended by Nos 38/1992 s. 9, 48/1995 s. 10(zf).**

47A Costs may be charged on the land

S. 47A inserted by No. 38/1992 s. 10(1).

- (1) If any amount required to be paid to VLA by an assisted person is subject to a condition under section 27(1)(c)(i), VLA may secure the payment of that amount (including any unpaid interest) and any interest which may become due and unpaid on the whole or any part of that amount under this Act by taking out a charge over any land which is recovered or preserved for the assisted person in the proceedings. **S. 47A(1) amended by No. 48/1995 s. 10(zf).**
- (2) If— **S. 47A(2) amended by No. 48/1995 s. 10(zf).**
- (a) an amount required to be paid to VLA by an assisted person has not been paid; and **S. 47A(2)(a) amended by No. 48/1995 s. 10(zf).**

s. 47B

- (b) the assisted person is registered as the proprietor of an estate in fee simple, either solely or as a joint tenant or a tenant in common, in land under the **Transfer of Land Act 1958** or holds an estate in fee simple or an equity of redemption, either solely or as a joint tenant or a tenant in common, in land not under that Act; and
- (c) the assisted person has refused or failed to pay the amount, within the time directed by VLA, or to give a charge over the land to secure the payment of that amount—

S. 47A(2)(c)
amended by
No. 48/1995
s. 10(zf).

VLA may secure the payment of any amount which has not been paid (including any unpaid interest) and any interest which may become due and unpaid on the whole or any part of that amount under this Act by taking out a charge over that land.

S. 47A(3)
amended by
No. 48/1995
s. 10(zf).

- (3) A charge taken out by VLA is to be for the benefit of the Legal Aid Fund.

S. 47B
inserted by
No. 38/1992
s. 10(1).

47B Charges over Transfer of Land Act land

S. 47B(1)
amended by
No. 48/1995
s. 10(zg)(i)(ii),
substituted by
No. 85/1998
s. 24(Sch.
item 38.1).

- (1) If VLA proposes to take out a charge over land, VLA must lodge a notice of the charge identifying the land to which it applies and the amount which has not been paid (including any interest which may become due and unpaid on the whole or any part of that amount).

S. 47B(2)
amended by
No. 48/1995
s. 10(zg)(ii).

- (2) The Registrar of Titles must, subject to the provisions of Division 1 of Part V of the **Transfer of Land Act 1958**, record in the register a notice lodged by VLA and upon the recording of that notice the land becomes charged with the payment

of the amount which has not been paid (including any interest) and any interest which may become due and unpaid on the whole or any part of that amount.

- (3) The charge may be registered without submission to the Registrar of any relevant certificate of title.

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S. 47C inserted by No. 38/1992 s. 10(1), amended by No. 48/1995 s. 10(zg)(i)(ii) (zh), repealed by No. 85/1998 s. 24(Sch. item 38.2).

47D Extinguishment of charge

S. 47D inserted by No. 38/1992 s. 10(1).

- (1) If the amount secured by the charge is paid, recovered or waived, VLA must seal a certificate stating this and lodge the certificate with the Registrar.

S. 47D(1) amended by No. 48/1995 s. 10(zi), substituted by No. 85/1998 s. 24(Sch. item 38.3).

- (2) If the Registrar of Titles receives a certificate under subsection (1) with respect to land, he or she must cancel any recording of the charge on the Register or record the cancellation of the charge in the Register.

S. 47D(2) substituted by No. 85/1998 s. 24(Sch. item 38.3).

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S. 47D(3) repealed by No. 85/1998 s. 24(Sch. item 38.4).

s. 47E

47E Enforcement of the charge

S. 47E
inserted by
No. 38/1992
s. 10(1).

S. 47E(1)
amended by
No. 48/1995
s. 10(z)(i).

S. 47E(2)
amended by
No. 48/1995
s. 10(z)(i).

S. 47E(3A)
inserted by
No. 85/1998
s. 24(Sch.
item 38.5).

S. 47E(4)
amended by
No. 85/1998
s. 24(Sch.
item 38.6).

S. 47E(4)(b)
amended by
No. 48/1995
s. 10(z)(i).

- (1) For the purpose of enforcing a charge to which section 47A(2) applies, VLA may sell the land charged.
- (2) If VLA intends to enforce the charge by selling the land it must serve notice of its intention to sell the land on the assisted person.
- (3) The notice—
 - (a) must be in writing; and
 - (b) must be served not less than 1 month before the intended sale; and
 - (c) must state—
 - (i) the amount owing at the date of the notice; and
 - (ii) that the sale will not proceed if payment is made within 1 month of the service of the notice; and
 - (iii) the address at which payment may be made.
- (3A) If the land to be sold is not under the **Transfer of Land Act 1958**, it must be brought under that Act before it is sold.
- (4) Section 77 of the **Transfer of Land Act 1958** applies to the sale as if—
 - (a) the charge were a registered mortgage; and
 - (b) VLA were a mortgagee under such a mortgage; and

- (c) the registered proprietor of the land were a mortgagor under such a mortgage; and
- (d) the requirement relating to the giving of notice were deleted; and
- (e) after subsection (3)(a) there were **inserted**—
- "(aa) Secondly, in the case of a charge under section 47A of the **Legal Aid Act 1978**, in paying the money owing in respect of mortgages or charges ranking higher in priority than the charge, in order of their respective priorities";
- (f) in subsection (3), references to 'secondly', 'thirdly' and 'fourthly' were references to 'thirdly', 'fourthly' and 'fifthly' respectively.

S. 47E(4)(e) amended by No. 48/1995 s. 10(zj)(ii).

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S. 47E(5) amended by No. 48/1995 s. 10(zj)(i), repealed by No. 85/1998 s. 24(Sch. item 38.7).

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S. 47E(6) amended by No. 48/1995 s. 10(zj)(iii), repealed by No. 85/1998 s. 24(Sch. item 38.7)

- (7) For the purpose of enforcing a charge or registering an instrument connected with an enforcement of a charge—
- (a) the Registrar of Titles may cancel the folio of the Register for the land charged and create a new folio;
- (b) VLA may require a person holding a document that is part of the chain of title for land not under the **Transfer of Land Act 1958** to produce it to VLA.

S. 47E(7)(b) amended by No. 48/1995 s. 10(zj)(i).

s. 47F

S. 47F
inserted by
No. 76/2001
s. 4.

47F Action not barred by Limitation of Actions Act 1958

Section 20 of the **Limitation of Actions Act 1958** does not apply, and is deemed never to have applied, to an action brought by VLA to recover money, being an amount payable by an assisted person to VLA under section 27 or an amount in respect of costs and interest that the assisted person is required to reimburse or pay to VLA under section 48(6), if payment of the money is or was—

- (a) secured in accordance with a condition referred to in section 27(1)(c), whether by a charge taken out under section 47A(1) or otherwise; or
- (b) secured by a charge taken out under section 47A(2); or
- (c) secured under section 48(6); or
- (d) secured by a charge taken out under section 48A as inserted by the **Legal Aid Commission (Amendment) Act 1986** and repealed by the **Legal Aid Commission (Amendment) Act 1992**; or
- (e) secured by a charge otherwise lawfully taken out for the benefit of the Legal Aid Fund established under section 41 or the Legal Aid Fund established under section 10 of the **Legal Aid Act 1969**—

and such an action may be brought at any time, whether or not that action could have been brought before the commencement of the **Legal Aid (Amendment) Act 2001**.

48 Costs

(1) Where—

S. 48(1)
amended by
No. 48/1995
s. 10(zk).

(a) legal assistance is provided under this Act to a person in relation to a proceeding (including a cross-proceeding) in a court or before a tribunal; and

S. 48(1)(a)
amended by
Nos 10/1986
s. 22, 38/1992
s. 11(a).

(b) the court or tribunal 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 that other party may request VLA to pay to that 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) Subject to subsection (3), VLA shall pay so much (if any) of the amount requested to be paid as VLA considers just and equitable.

S. 48(2)
amended by
No. 48/1995
s. 10(zk).

(3) VLA shall not pay an amount in respect of costs incurred in a proceeding at first instance unless it appears to VLA that the person who made the request will suffer substantial hardship if that amount is not paid by VLA.

S. 48(3)
amended by
No. 48/1995
s. 10(zk).

(4) Subject to subsection (6), any amount paid by VLA under this section shall be deemed to have been paid by the assisted person.

S. 48(4)
amended by
Nos 61/1989
s. 14(1),
48/1995
s. 10(zk).

(5) Where a person is legally assisted in connexion with part only of any proceeding, the reference in this section to the costs of the other party in that proceeding is a reference to so much of those costs as is attributable to that part.

s. 48B

S. 48(6)
inserted by
No. 61/1989
s. 14(2),
amended by
No. 48/1995
s. 10(zk).

(6) If VLA agrees to pay an amount in respect of costs under subsection (2), VLA may require the assisted person—

S. 48(6)(a)
amended by
No. 48/1995
s. 10(zk).

(a) to reimburse VLA for the whole or part of the amount paid under subsection (2); and

S. 48(6)(b)
amended by
Nos 38/1992
s. 11(b),
48/1995
s. 10(zk).

(b) to secure the reimbursement in any manner that VLA thinks fit.

S. 48(6)(c)
inserted by
No. 38/1992
s. 11(b),
amended by
No. 48/1995
s. 10(zk).

(c) pay interest on the reimbursement at any time and upon any terms and conditions determined by VLA.

S. 48(7)
inserted by
No. 38/1992
s. 11(c),
amended by
No. 48/1995
s. 10(zk).

(7) VLA may not require the payment of interest under subsection (6)(c) at a rate which exceeds 70% of the rate fixed under section 2 of the **Penalty Interest Rates Act 1983**.

S. 48A
inserted by
No. 10/1986
s. 23,
repealed by
No. 38/1992
s. 10(2).³

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S. 48B
inserted by
No. 10/1986
s. 23,
amended by
No. 48/1995
s. 10(zl)(i)(ii).

48B Certificate of costs

In any proceedings a certificate signed by the managing director stating the amount owed to VLA at the date of the certificate by any assisted person is evidence of the amount owed by that person at that date.

48C Assignment of right to recover money to VLA

S. 48C
inserted by
No. 38/1992
s. 12.

(1) If—

S. 48C(1)
amended by
No. 48/1995
s. 10(zm).

(a) an assisted person has a right to recover money in respect of any matter for which that person has been given assistance under this Act; and

(b) the assisted person owes money in respect of that matter to VLA; and

S. 48C(1)(b)
amended by
No. 48/1995
s. 10(zm).

(c) the assisted person has not recovered that money within a time which is, in the opinion of VLA, reasonable—

S. 48C(1)(c)
amended by
No. 48/1995
s. 10(zm).

the person must, within 21 days after VLA has served a notice on him or her to do so, assign to VLA those rights and remedies which he or she has in respect of the recovery of that money which are specified by VLA in the notice.

(2) A person who does not comply with a notice under subsection (1) is to be taken to have assigned those rights and remedies to VLA on the expiration of 21 days after the service of the notice.

S. 48C(2)
amended by
No. 48/1995
s. 10(zm).

(3) VLA must pay to the assisted person any amount of money recovered by VLA through the exercise of a right or remedy assigned under this section which exceeds any money owing to VLA in respect of that matter and any of the costs to VLA of recovering the money.

S. 48C(3)
amended by
No. 48/1995
s. 10(zm).

49 State may enter into agreements and arrangements

- (1) The State may from time to time enter into an agreement or arrangement with the Commonwealth for or with respect to—
- (a) the moneys to be made available by the Commonwealth, or by the State and the Commonwealth, for the purposes of legal aid;
 - (b) the priorities to be observed, in relation to moneys made available by the Commonwealth, in the provision of legal aid as between classes of persons or classes of matters, or both;
 - (c) the sharing of—

S. 49(1)(c)(i)
amended by
No. 48/1995
s. 10(zn),
repealed by
No. 93/1998
s. 17(a).

* * * * *

S. 49(1)(c)(ii)
amended by
No. 48/1995
s. 10(zn).

- (ii) operational costs incurred in the provision of legal aid by VLA;

S. 49(1)(d)(e)
amended by
No. 48/1995
s. 10(zn),
repealed by
No. 93/1998
s. 17(b).

* * * * *

S. 49(1)(f)
amended by
No. 93/1998
s. 17(c).

- (f) any matter incidental to a matter mentioned in paragraph (a), (b) or (c).

S. 49(2)
amended by
No. 48/1995
s. 10(zn).

- (2) Any such agreement or arrangement shall, to the extent that it involves matters within the purview of VLA, be binding on VLA.

49AA VLA's power to enter legal aid arrangements

- (1) Despite anything to the contrary in section 49, VLA may enter into legal aid arrangements.
- (2) The Attorney-General must approve a legal aid arrangement before VLA enters into that arrangement.

S. 49AA
inserted by
No. 93/1998
s. 15.

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.

S. 49A
inserted by
No. 48/1995
s. 8.

49B Supreme Court—limitation of jurisdiction

- (1) It is the intention of section 30(17A) to alter or vary section 85 of the **Constitution Act 1975**.
- (2) It is the intention of section 35(3), as amended by section 17(11) of the **Law and Justice Legislation Amendment Act 1997**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 36(3), as amended by section 17(15) of the **Law and Justice Legislation Amendment Act 1997**, to alter or vary section 85 of the **Constitution Act 1975**.
- (4) It is the intention of section 30(18) as substituted by section 8 of the **Legal Aid (Amendment) Act 1998** to alter or vary section 85 of the **Constitution Act 1975**.

S. 49B
inserted by
No. 44/1997
s. 22.

S. 49B(4)
inserted by
No. 93/1998
s. 11.

50 Regulations

The Governor in Council may make regulations for or with respect to—

- (a) disseminating information to the public concerning the provisions of this Act;

s. 51

(b) prescribing forms to be used and procedures to be followed under this Act;

S. 50(ba) inserted by No. 10/1986 s. 18(g).

(ba) prescribing times within which applications for the reconsideration or review of a decision under this Act must be made;

S. 50(c) amended by No. 10/1986 ss 9(c), 16(c), repealed by No. 44/1997 s. 17(23).

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(d) generally all matters authorized or required to be prescribed for carrying into effect the provisions of this Act.

New s. 51 inserted by No. 44/1997 s. 23.

51 Transitional provisions (1997 Amending Act)

- (1) On the commencement of section 13 of the **Law and Justice Legislation Amendment Act 1997**, the directors of Victoria Legal Aid appointed under section 11(c) of this Act, as in force immediately before that commencement, go out of office.
- (2) Victoria Legal Aid is to be taken to be the same body despite the changes made to the composition of its board of directors by section 13 of the **Law and Justice Legislation Amendment Act 1997** and, except as otherwise provided by subsection (1), no act, proceeding, matter or thing is to be affected because of those changes.
- (3) On the commencement of section 14 of the **Law and Justice Legislation Amendment Act 1997**, any legal aid review committee established under this Act that is in existence immediately before that commencement is abolished and its members go out of office.

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- (4) On the commencement of section 17(17) of the **Law and Justice Legislation Amendment Act 1997**, any legal aid appeal committee established under this Act that is in existence immediately before that commencement is abolished and its members go out of office.
- (5) A matter before a legal aid review committee or a legal aid appeal committee that had not been determined by that committee as at the commencement of section 14 or 17(17) (as the case requires) of the **Law and Justice Legislation Amendment Act 1997** must, until it is determined or until 1 August 1997 (whichever is the earlier), continue to be dealt with by that committee in accordance with this Act as if the **Law and Justice Legislation Amendment Act 1997** had not been enacted.
- (6) For the purpose of subsection (5) and despite anything to the contrary in this Act, a legal aid review committee or a legal aid appeal committee continues to exist until all matters referred to in that subsection have been determined by it or until 1 August 1997, whichever is the earlier.
- (7) A matter referred to in subsection (5) that has not been determined by the legal aid review committee or the legal aid appeal committee (as the case requires) as at 1 August 1997 is to be dealt with by an independent reviewer in accordance with this Act and for that purpose—
- (a) anything done in relation to the matter by the committee before that date is deemed to have been done by the independent reviewer; and
 - (b) the independent reviewer may have regard to any record of the committee relating to the matter.

- (8) An application, request or complaint made, or other matter arising, before the commencement of section 14 or 17(17) of the **Law and Justice Legislation Amendment Act 1997** (including a request under section 34(1) for reconsideration of a decision of a legal aid review committee) that under this Act as in force before that commencement would have been dealt with by a legal aid review committee or a legal aid appeal committee but was not before such a committee as at that commencement is to be dealt with by an independent reviewer in accordance with this Act.

New s. 52
inserted by
No. 93/1998
s. 12.

52 Transitional provisions: Legal Aid (Amendment) Act 1998

- (1) Section 30 of this Act as in force immediately before the commencement of Part 4 of the **Legal Aid (Amendment) Act 1998** continues to apply to—
- (a) the taking of any action or the making of any decision by VLA under that section; and
 - (b) the hearing and determination of any matters by an independent reviewer under that section; and
 - (c) any application to the Supreme Court under section 30(18)—
- which had begun before that commencement.
- (2) Despite the substitution of section 30(18) of this Act by section 8 of the **Legal Aid (Amendment) Act 1998**, an application may be made to the Supreme Court under that subsection as in force immediately before the commencement of section 8 of that Act for an order setting aside an exclusion or removal that occurred—
- (a) before the commencement of Part 4 of that Act; or

(b) after the commencement of Part 4 of that Act but to which section 30 as in force immediately before that commencement continues to apply by virtue of subsection (1)—

and that application may be dealt with and determined as if section 30(18) of this Act had not been so substituted.

* * * * *

Pt 9 (Heading and ss 51–64) amended by No. 50/1988 s. 93(2)(Sch. 2 Pt 2 item 30), repealed by No. 14/1994 s. 8.

ENDNOTES

1. General Information

The **Legal Aid Commission Act 1978** was assented to on 19 December 1978 and came into operation as follows:

Section 4 on 4 April 1979: Government Gazette 4 April 1979 page 901;
sections 1–3, 5–8, 12, 13, 15, 18, 19, 21, 22, 49–64 on 13 February 1980:
Government Gazette 13 February 1980 page 498; rest of Act on 1 September
1981: Government Gazette 15 July 1981 page 2307.

Appointed day under section 51 is 1 September 1981.

The name of this Act was changed from the **Legal Aid Commission Act 1978** to the **Legal Aid Act 1978** by the **Legal Aid Commission (Amendment) Act 1995**, No. 48/1995 section 4.

2. Table of Amendments

This Version incorporates amendments made to the **Legal Aid Act 1978** by Acts and subordinate instruments.

Legal Profession Practice (Amendment) Act 1981, No. 9697/1981

Assent Date: 5.1.82
Commencement Date: 31.3.82: s. 1(3)
Current State: All of Act in operation

Penalties and Sentences (Amendment) Act 1983, No. 9945/1983

Assent Date: 20.9.83
Commencement Date: S. 3(1)(Sch. 1 item 34) on 20.12.83: Government Gazette 14.12.83 p. 4035
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid Commission (Amendment) Act 1986, No. 10/1986

Assent Date: 8.4.86
Commencement Date: 1.5.86: Government Gazette 30.4.86 p. 1116
Current State: All of Act in operation

Community Services Act 1987, No. 16/1987

Assent Date: 12.5.87
Commencement Date: S. 4(3)(Sch. 1 item 13) on 22.2.89: Government Gazette 22.2.89 p. 386
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

State Superannuation Act 1988, No. 50/1988

Assent Date: 24.5.88
Commencement Date: S. 93(2)(Sch. 2 Pt 2 item 30) on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Legal Aid Act 1978
No. 9245 of 1978

Endnotes

Legal Aid Commission (Amendment) Act 1989, No. 61/1989 (as amended by Nos 48/1995, 35/1996, 44/1997)

Assent Date: 12.9.89
Commencement Date: Ss 1–4, 6, 7, 9(1)(a)(f)–(n), 10, 11, 13–15 on 20.9.89: Government Gazette 20.9.89 p. 2403; s. 12 on 14.7.97: Special Gazette (No. 77) 10.7.97 p. 1; s. 8 on 28.7.97: Government Gazette 24.7.97 p. 1824; s. 9(1)(d)(i) never proclaimed, repealed by No. 35/1996 s. 453(Sch. 1 item 48(b)(i))
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid Commission (Amendment) Act 1992, No. 38/1992

Assent Date: 16.6.92
Commencement Date: 12.8.92: Government Gazette 12.8.92 p. 2178
Current State: All of Act in operation

Legal Aid Commission (Amendment) Act 1994, No. 14/1994

Assent Date: 3.5.94
Commencement Date: 3.5.94
Current State: All of Act in operation

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 47) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid Commission (Amendment) Act 1995, No. 48/1995

Assent Date: 14.6.95
Commencement Date: Pt 1 (ss 1–3) on 14.6.95: s. 2(1); rest of Act on 14.12.95: s. 2(3)
Current State: All of Act in operation

Miscellaneous Acts (Omnibus Amendments) Act 1996, No. 22/1996

Assent Date: 2.7.96
Commencement Date: Pt 5 (ss 13–15) on 2.7.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 47.1–47.15) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Law and Justice Legislation Amendment Act 1997, No. 44/1997

Assent Date: 11.6.97
Commencement Date: Ss 12, 18, 24 on 11.6.97: s. 2(1); ss 14–17, 19–23 on 14.7.97: Special Gazette (No. 77) 10.7.97 p. 1; s. 13 on 1.7.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid Act 1978
No. 9245 of 1978

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Legal Practice (Amendment) Act 1997, No. 102/1997

Assent Date: 16.12.97
Commencement Date: S. 49(Sch. item 3) on 16.12.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 38) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid (Amendment) Act 1998, No. 93/1998

Assent Date: 24.11.98
Commencement Date: All of Act (*except* Pts 3, 4) on 24.11.98: s. 2(1); Pt 3 (ss 5, 6) Pt 4 (ss 7–12) on 1.1.99: s. 2(3)
Current State: All of Act in operation

Legal Aid (Amendment) Act 2001, No. 76/2001

Assent Date: 27.11.01
Commencement Date: 28.11.01: s. 2
Current State: All of Act in operation

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 111) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Justice Legislation (Amendment) Act 2005, No. 17/2005

Assent Date: 24.5.05
Commencement Date: Ss 3–5 on 25.5.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 57) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Legal Aid Act 1978
No. 9245 of 1978

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Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 58) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Justice Legislation Amendment Act 2007, No. 53/2007

Assent Date: 17.10.07
Commencement Date: S. 22 on 18.10.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Justice Legislation Further Amendment Act 2009, No. 55/2009

Assent Date: 22.9.09
Commencement Date: Ss 53, 54 on 30.10.09: Government Gazette 29.10.09 p. 2729
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 76) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

Integrity and Accountability Legislation Amendment Act 2012, No. 82/2012

Assent Date: 18.12.12
Commencement Date: S. 163 on 10.2.13: Special Gazette (No. 32) 6.2.13 p. 2; s. 310 on 11.2.13: s. 2(5)
Current State: This information relates only to the provision/s amending the **Legal Aid Act 1978**

3. Explanatory Details

¹ Pt 2: Section 9 of the **Legal Aid Commission (Amendment) Act 1995**, No. 48/1995 reads as follows:

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 subsection, 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 subsection, debts, liabilities and obligations of VLA; and
- (e) VLA shall, by force of this subsection, 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 subsection, 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
 - (g) all officers or employees of the former body immediately before that day shall become, by force of this subsection, officers or employees (as the case requires) of VLA; and
 - (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.
- (3) A person transferred to VLA under subsection (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
 - (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.

- (4) The service of a person referred to in subsection (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 appointed day, as an officer or employee of the former body.
- (5) A person referred to in subsection (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 subsection (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 subsection (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.

² S. 30: Section 27 of the **Legal Aid Commission (Amendment) Act 1986**, No. 10/1986 reads as follows:

27 Referral panels

The referral panels prepared by the Commission under section 30 of the Principal Act before the commencement of this Act are deemed to have been prepared under section 30 as substituted by this Act.

³ S. 48A (*repealed*): Section 14 of the **Legal Aid Commission (Amendment) Act 1992**, No. 38/1992 reads as follows:

14 Transitional provision—charges

Section 48A of the Principal Act as in force immediately before the coming into operation of section 10(2) of this Act, continues to apply to any charge created by it as if section 10 of this Act had not been enacted.