

Queensland



# LEGAL AID QUEENSLAND ACT 1997

**Reprinted as in force on 16 December 1997  
(includes amendments up to Act No. 82 of 1997)**

**Reprint No. 1A**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# Information about this reprint

This Act is reprinted as at 16 December 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland



**LEGAL AID QUEENSLAND ACT 1997**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title . . . . .	7
2	Commencement . . . . .	7
3	Main objects . . . . .	7
4	Dictionary . . . . .	8
5	Meaning of “legal assistance” . . . . .	8
6	Meaning of “legally assisted person” . . . . .	8
7	Meaning of “legal assistance arrangement” . . . . .	8
<b>PART 2—LEGAL ASSISTANCE</b>		
<i>Division 1—Preliminary</i>		
8	Application of pt 2 . . . . .	9
<i>Division 2—Giving legal assistance</i>		
9	Applying for legal assistance . . . . .	9
10	How to apply for legal assistance . . . . .	9
11	What is taken into account in deciding whether legal assistance may be given . . . . .	10
12	What is taken into account in deciding whether an applicant needs legal assistance . . . . .	10
13	What else is taken into account if the applicant is a corporation . . . . .	11
14	What else is taken into account in deciding whether to give legal assistance for an applicant not normally resident in the State . . . . .	11
15	Effect of likely outcome on decision whether to give legal assistance for a court proceeding . . . . .	12
16	Legal Aid may assist person having an interest adverse to the State etc. . . . .	12
17	Deciding applications . . . . .	12

---

18	Conditions of approval . . . . .	13
19	How Legal Aid may enforce a condition of an approval . . . . .	13
20	Legal Aid must give written notice if it refuses an application . . . . .	14
	<b><i>Division 3—Reviews and court recommendations</i></b>	
21	Reviewing legal assistance decisions . . . . .	14
22	Court may recommend legal assistance . . . . .	14
	<b><i>Division 4—Alternative dispute resolution</i></b>	
23	Definitions for div 4 . . . . .	14
24	Legal Aid’s powers in relation to alternative dispute resolution . . . . .	15
25	Admissions made to conferencing chairpersons . . . . .	16
26	Conferencing chairperson to maintain secrecy . . . . .	16
27	Ordinary protection and immunity allowed . . . . .	16
	<b><i>Division 5—General duties of lawyers and Legal Aid agents</i></b>	
28	Lawyer must notify other parties that a person is legally assisted . . . . .	17
29	Legal Aid agent must give particular information to Legal Aid . . . . .	17
	<b><i>Division 6—Costs of proceedings</i></b>	
30	What court proceeding costs is a legally assisted person taken to be entitled to, or responsible for, for the purpose of costs orders . . . . .	18
31	Legal Aid’s subrogation rights for costs . . . . .	19
32	Legal Aid may pay costs awarded against legally assisted person . . . . .	19
	<b><i>Division 7—Other provisions about Legal Aid’s recovery of its costs and expenses</i></b>	
33	How lawyer must deal with particular amounts recovered by a legally assisted person . . . . .	21
34	How lawyer must deal with particular property, other than amounts, recovered by a legally assisted person . . . . .	21
35	How Legal Aid agent must deal with contributions received for Legal Aid . . . . .	21
36	Legal Aid’s entitlement to repayment of costs if legally assisted person recovers property etc. . . . .	22
37	Legal Aid may direct legally assisted person to take action to recover particular property . . . . .	23
38	Legal Aid may charge a legally assisted person interest on particular unpaid amounts . . . . .	23

---

39	How Legal Aid may recover particular unpaid amounts from a legally assisted person etc. . . . .	24
	<i>Division 8—Legal Aid agents’ fees</i>	
40	How much is payable by Legal Aid to a Legal Aid agent etc. . . . .	24
	<b>PART 3—LEGAL AID QUEENSLAND</b>	
	<i>Division 1—Establishment</i>	
41	Establishment . . . . .	25
42	Legal Aid is a body corporate etc. . . . .	25
	<i>Division 2—Functions and powers</i>	
43	Main functions . . . . .	26
44	Other functions . . . . .	26
45	General powers . . . . .	28
46	Power to enter into legal assistance arrangements and other agreements . . . . .	28
47	Power to assist court . . . . .	29
	<b>PART 4—LEGAL AID BOARD</b>	
	<i>Division 1—Establishment, composition etc.</i>	
48	Establishment . . . . .	30
49	Composition . . . . .	30
50	Appointment conditions . . . . .	30
51	Duration of appointment . . . . .	30
52	Board’s functions . . . . .	31
53	Board’s report to Minister . . . . .	31
54	Board’s powers . . . . .	31
55	Delegation of board’s powers . . . . .	32
	<i>Division 2—Procedure</i>	
56	Time and place of meetings . . . . .	32
57	Quorum . . . . .	32
58	Decisions . . . . .	33
59	Decisions without meetings . . . . .	33
60	Minutes . . . . .	33
61	Procedure . . . . .	33
62	Conflicts of interest . . . . .	33

***Division 3—Attorney-General’s directions***

63	Attorney-General may give board directions . . . . .	34
----	--	----

**PART 5—OTHER PROVISIONS ABOUT LEGAL AID  
QUEENSLAND*****Division 1—Chief executive officer and employees***

64	Chief executive officer of Legal Aid . . . . .	35
65	Qualifications for appointment . . . . .	35
66	Term of office . . . . .	35
67	Chief executive officer’s responsibilities . . . . .	35
68	Things done by chief executive officer . . . . .	36
69	Delegation by chief executive officer . . . . .	36
70	Employees . . . . .	36

***Division 2—Legal practice***

71	External employment . . . . .	36
72	Particular provisions of the Legal Practitioners Act 1995 and Queensland Law Society Act 1952 do not apply to Legal Aid lawyers . . .	37
73	Legal Aid taken to be solicitors firm etc. . . . .	37
74	Professional conduct . . . . .	37
75	Application of legal professional privilege to Legal Aid and Legal Aid lawyers . . . . .	37
76	Legal Aid and its employees’ right of practice . . . . .	38
77	Application of Queensland Law Society Act 1952 to Legal Aid lawyers who are solicitors . . . . .	39
78	Application of laws about conduct to Legal Aid lawyers who are barristers . . . . .	39
79	Solicitor on the record . . . . .	39

**PART 6—MISCELLANEOUS**

80	Protection from liability . . . . .	40
81	Legal Aid not liable for particular acts or omissions of Legal Aid agents . . . . .	40
82	Secrecy . . . . .	40
83	Legal Aid employee’s duty to give information . . . . .	42
84	Offence of misrepresentation . . . . .	42
85	Proceedings under Act . . . . .	43

86	Evidence . . . . .	43
87	Approval of forms . . . . .	44
88	Regulation-making power . . . . .	44

**PART 7—TRANSITIONAL PROVISIONS**

89	Former entity . . . . .	44
90	Transitional board’s decisions . . . . .	44
91	Consultative committees, legal aid committees and review committees . . . . .	45
92	Existing decisions and directions of, and delegations by, former entity’s Director . . . . .	45
93	Review of decisions . . . . .	45
94	Assets . . . . .	46
95	Rights and liabilities . . . . .	46
96	Revesting of assets, rights and liabilities . . . . .	46
97	Proceedings . . . . .	47
98	Existing arrangements or contracts . . . . .	47
99	Former entity’s director . . . . .	47
100	Former entity’s Assistant Directors and existing employees . . . . .	48
101	References to Legal Aid Act 1978 . . . . .	48
102	References to former entity . . . . .	48
103	References to former director . . . . .	48

	<b>SCHEDULE</b>	49
--	-----------------	----

**DICTIONARY**

**ENDNOTES**

1	Index to endnotes . . . . .	51
2	Date to which amendments incorporated . . . . .	51
3	Key . . . . .	51
4	Table of earlier reprints . . . . .	52
5	List of legislation . . . . .	52
6	List of annotations . . . . .	52





# LEGAL AID QUEENSLAND ACT 1997

[as amended by all amendments that commenced on or before 16 December 1997]

**An Act to establish Legal Aid Queensland, to provide for legal assistance for persons throughout the State, and for other purposes**

## PART 1—PRELIMINARY

### Short title

1. This Act may be cited as the *Legal Aid Queensland Act 1997*.

### Commencement

2.(1) Section 90<sup>1</sup> commences on the date of assent.

(2) The remaining provisions commence on 1 July 1997.

### Main objects

3.(1) The main objects of this Act are—

- (a) to provide for giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way; and
- (b) to pursue innovative commercial arrangements, including legal assistance arrangements, for giving legal assistance at a reasonable cost to the community and on an equitable basis throughout the State.

---

<sup>1</sup> Section 90 (Transitional board's decisions)

(2) The objects are to be achieved mainly by establishing Legal Aid Queensland.

### **Dictionary**

4. The dictionary in the schedule defines particular words used in this Act.<sup>2</sup>

### **Meaning of “legal assistance”**

5.(1) **“Legal assistance”** is the giving of a legal service, including legal advice, free or on payment of an amount that is less than the cost of giving the service.

(2) The service may be given by a Legal Aid lawyer or Legal Aid agent.

### **Meaning of “legally assisted person”**

6. A **“legally assisted person”** is a person—

- (a) who is receiving legal assistance; or
- (b) who was receiving legal assistance for a matter and, before the matter finished, stopped receiving legal assistance.

### **Meaning of “legal assistance arrangement”**

7. A **“legal assistance arrangement”** is an arrangement for giving legal assistance under which—

- (a) the State, Commonwealth or another entity, as purchaser of Legal

---

<sup>2</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definition can be found. For example, the definition ‘**“legal assistance”** see section 5’ tells the reader there is a definition of “legal assistance” in the section.

Aid's legal services, decides what legal services are to be given by Legal Aid, as the provider of the legal services, to legally assisted persons; and

- (b) Legal Aid, as provider, gives the legal services, directly or indirectly, to legally assisted persons.

## **PART 2—LEGAL ASSISTANCE**

### *Division 1—Preliminary*

#### **Application of pt 2**

**8.** This part applies only to legal assistance consisting of the following legal services given, or to be given, by Legal Aid or a Legal Aid agent—

- (a) legal services, other than duty lawyer services, for a court proceeding or an alternative dispute resolution process;
- (b) another legal service the board decides.

### *Division 2—Giving legal assistance*

#### **Applying for legal assistance**

**9.** A person may apply to Legal Aid or a Legal Aid agent for legal assistance.

#### **How to apply for legal assistance**

**10.** An application for legal assistance must be made in the approved form.

**What is taken into account in deciding whether legal assistance may be given**

**11.(1)** Legal assistance may be given to an applicant for legal assistance (the “**applicant**”) only if the applicant meets the criteria—

- (a) prescribed under a regulation; or
- (b) published by Legal Aid and notified in the gazette.

**(2)** Without limiting subsection (1), a regulation or a publication under the subsection may be made or published to give effect to conditions of a legal assistance arrangement.

**(3)** If there is an inconsistency between a regulation and a publication mentioned in subsection (1)(b), the regulation prevails to the extent of the inconsistency.

**(4)** The other provisions of this division apply subject to this section.

**What is taken into account in deciding whether an applicant needs legal assistance**

**12.(1)** In deciding whether an applicant needs legal assistance, Legal Aid may have regard to all relevant matters.

**(2)** In this section—

“**relevant matters**” include the following—

- (a) the applicant’s assets and income;
- (b) the cash amount that is, or can be made, readily available to the applicant;
- (c) the applicant’s debts, liabilities and other financial obligations;
- (d) the cost of living in the locality where the applicant resides;
- (e) the ability of a relevant person to help the applicant obtain legal services from a private lawyer having regard to the matters, including the matters mentioned in paragraphs (a) to (d), that would be relevant if the relevant person were the applicant for legal assistance;
- (f) the cost of obtaining the legal services from a private lawyer;

- (g) the nature and extent of the following—
  - (i) any benefit that may accrue to the applicant, the public or a section of the public by giving the legal assistance;
  - (ii) any detriment the applicant, the public or a section of the public may suffer if the legal assistance is refused;
- (h) anything else affecting the applicant's ability to meet the cost of obtaining the legal services from a private lawyer;
- (i) a recommendation made by a court under section 22.<sup>3</sup>

**“relevant person”** means a person who—

- (a) usually gives the applicant financial support; or
- (b) can reasonably be expected to give the applicant financial support;  
or
- (c) usually receives financial support from the applicant.

### **What else is taken into account if the applicant is a corporation**

**13.** If the applicant is a corporation, Legal Aid may also have regard to anything that would be a relevant matter if the application were made by the persons who are the corporation's directors and members.

### **What else is taken into account in deciding whether to give legal assistance for an applicant not normally resident in the State**

**14.** If an applicant for legal assistance does not normally live in the State, Legal Aid may legally assist the applicant only if the legal assistance relates to—

- (a) a court proceeding in the State; or
- (b) a matter arising under the law in force in the State.

---

<sup>3</sup> Section 22 (Court may recommend legal assistance)

**Effect of likely outcome on decision whether to give legal assistance for a court proceeding**

**15.(1)** If an applicant asks for legal assistance for a court proceeding, Legal Aid may also have regard to whether the result of the proceeding is likely to favour the applicant.

**(2)** However, if the applicant is an accused person charged with an indictable offence, Legal Aid—

- (a) for an indictable offence under a law of the State—must have regard to the desirability of the applicant being represented by a lawyer in a following specified criminal proceeding, whether or not the result of the proceeding is likely to favour the applicant—
  - (i) a committal proceeding for the offence;
  - (ii) the applicant’s trial or sentencing; or
- (b) for an indictable offence under a Commonwealth law—must have regard to the criteria stated in the legal assistance arrangement under which the assistance is to be given.

**Legal Aid may assist person having an interest adverse to the State etc.**

**16.** Legal Aid may give a person legal assistance for a matter even though the person’s interest is, or may be, adverse to the interest of the following—

- (a) the State;
- (b) the Commonwealth;
- (c) an entity established for a public purpose under a law of the State or Commonwealth;
- (d) a body corporate in which the State, Commonwealth or an entity mentioned in paragraph (c) has an interest.

**Deciding applications**

**17.(1)** Legal Aid may—

- (a) approve an application for legal assistance unconditionally, or on

conditions it considers appropriate having regard to—

- (i) its objects under this Act; and
  - (ii) a relevant legal assistance arrangement; or
- (b) refuse the application.

(2) Without limiting subsection (1), Legal Aid may decide to give the legal assistance—

- (a) itself or through a Legal Aid agent; and
- (b) free, or on condition that the legally assisted person pays part of the cost of giving the assistance.

### **Conditions of approval**

**18.** Without limiting section 17, a condition of an approval for legal assistance may provide for the following—

- (a) terminating the assistance;
- (b) circumstances in which the legally assisted person may be required to pay Legal Aid all or part of its expenses incurred in giving the assistance;
- (c) contributions by the legally assisted person to an expense incurred or to be incurred by Legal Aid in giving the assistance;
- (d) charging or giving the legally assisted person's property as security for payment to Legal Aid of an amount the legally assisted person is or may become liable to pay to Legal Aid.

### **How Legal Aid may enforce a condition of an approval**

**19.(1)** Legal Aid may, in a court of competent jurisdiction—

- (a) enforce a condition imposed under section 17<sup>4</sup> against a legally assisted person by action as if it were a condition of a contract entered into with the legally assisted person; or
- (b) enforce a charge or security given under a condition imposed

---

<sup>4</sup> Section 17 (Deciding applications)

under section 17 in a way that would be available to Legal Aid if the charge or security had been given as a condition of a contract entered into with the legally assisted person.

(2) Without limiting subsection (1), if a contribution is payable by a legally assisted person to a Legal Aid agent under a condition of approval for legal assistance, the agent, with Legal Aid’s written approval, may start a proceeding in the agent’s name to recover the contribution.

### **Legal Aid must give written notice if it refuses an application**

20. If Legal Aid refuses an application for legal assistance, it must give the applicant written notice of its decision.

## *Division 3—Reviews and court recommendations*

### **Reviewing legal assistance decisions**

21. The board must establish a review mechanism it considers appropriate to review decisions made by Legal Aid about legal assistance.

### **Court may recommend legal assistance**

22.(1) A court may recommend that a person be given legal assistance by Legal Aid if the person is before the court in a specified criminal proceeding and the court considers it appropriate to make the recommendation.

(2) An application by the person for legal assistance must be made in the approved form and dealt with under this part.

## *Division 4—Alternative dispute resolution*

### **Definitions for div 4**

23. In this division—  
“**alternative dispute resolution**” includes conferencing.



**“conferencing”** means a structured negotiation process approved by Legal Aid in which the conferencing chairperson helps the parties to a dispute settle the dispute.

**“conferencing chairperson”**, of a conferencing session, means the person to whom a matter has been referred for conferencing under this part.

**“conferencing session”** means a meeting at which conferencing takes place and includes a step taken in arranging the session or following-up a session.

### **Legal Aid’s powers in relation to alternative dispute resolution**

**24.(1)** If a person applies to Legal Aid for legal assistance in a matter, Legal Aid may arrange for the matter, or part of it, to be referred to an alternative dispute resolution process—

- (a) whether or not Legal Aid has decided the application for legal assistance; and
- (b) if it considers it appropriate in the circumstances.

**(2)** If the other party to the matter agrees to the referral to an alternative dispute resolution process, Legal Aid may decide to consider the application, or continue to give the legal assistance, only if the applicant or legally assisted person participates in the alternative dispute resolution process.

**(3)** Legal Aid may—

- (a) defray expenses it incurs incidentally to an alternative dispute resolution process from amounts available to it; or
- (b) before or after it decides an application for legal assistance, by written notice, ask the applicant or legally assisted person to pay for the expenses mentioned in paragraph (a) by a stated day.

**(4)** If an amount incurred by Legal Aid and payable to Legal Aid under subsection (3)(b) is not paid as required by the subsection, Legal Aid may recover the amount as a debt in a court of competent jurisdiction.

**Admissions made to conferencing chairpersons**

**25.(1)** Evidence of anything done or said, or an admission made, at a conferencing session is admissible at the trial of the matter or in another court proceeding only if all parties to the conferencing session agree.

**(2)** A document prepared for, in the course of, or as a result of, a conferencing session, or a copy of it, is admissible in evidence in a court proceeding only if all parties to the conferencing session agree.

**(3)** Subsections (1) and (2) do not apply to a document or evidence about which a disclosure has been made to prevent or minimise the danger of injury to a person or damage to property.

**Conferencing chairperson to maintain secrecy**

**26.(1)** A conferencing chairperson must not, without reasonable excuse, disclose information coming to the chairperson's knowledge during a conferencing session.

Maximum penalty—50 penalty units.

**(2)** It is a reasonable excuse to disclose information if the disclosure is made—

- (a) with the agreement of all the parties to the conferencing session; or
- (b) for this division; or
- (c) for statistical purposes without revealing, or being likely to reveal, the identity of a person about whom the information relates; or
- (d) for an inquiry or proceeding about an offence happening during the conferencing session; or
- (e) for a proceeding founded on fraud alleged to be connected with, or to have happened during, the conferencing session; or
- (f) under a requirement imposed under an Act.

**Ordinary protection and immunity allowed**

**27.(1)** In performing the functions of conferencing chairperson, a conferencing chairperson has the same protection and immunity as a judge

performing the functions of a judge.

(2) A party appearing in a matter referred to a conferencing session has the same protection and immunity the party would have if the matter were being heard before the Supreme Court.

(3) A witness attending in a matter referred to a conferencing session has the same protection and immunity as a witness attending before the Supreme Court.

(4) A document produced at, or used for, a conferencing session has the same protection during the conferencing session it would have if produced before the Supreme Court.

(5) In subsection (2)—

“**party**” includes a party’s lawyer or agent.

### *Division 5—General duties of lawyers and Legal Aid agents*

#### **Lawyer must notify other parties that a person is legally assisted**

**28.(1)** If a person who is receiving legal assistance is, or becomes, a party to a proceeding, the person’s lawyer must give each other person who is, or becomes, a party to the proceeding notice, in the approved form, that the person is legally assisted.

(2) If the notice is given with a court process, it may be given under the rules of court for service of the process.

#### **Legal Aid agent must give particular information to Legal Aid**

**29.(1)** This section applies if a person is receiving legal assistance for a matter and a Legal Aid agent is performing, or has performed services for the person in relation to the matter.

(2) If Legal Aid considers it necessary to perform its functions, it may, by written notice, ask the agent to give it any relevant information or document about the matter that is within the agent’s knowledge, or to which the agent has access.

(3) The agent must give the information or document to Legal Aid by the

day stated in the notice despite any legal professional privilege arising out of the relationship between the agent and the legally assisted person.

Maximum penalty—20 penalty units.

(4) A Legal Aid agent may give Legal Aid any information or document the agent considers may help Legal Aid perform its functions despite any legal professional privilege arising out of the relationship between the agent and the legally assisted person.

(5) For this section, the legally assisted person is taken to have waived any privilege or right, including legal professional privilege, that might otherwise prevent the agent giving the information or document.

(6) However, the privilege, right or relationship is not otherwise affected by the agent performing, or having performed, services for the person under this Act.

(7) An agent does not incur civil liability for an act done or omission made, honestly and without negligence under this section.

(8) In this section—

“**relevant information**”, about a matter, means information—

- (a) relevant to giving legal assistance to a person for the matter; or
- (b) about the matter’s progress and disposal.

### *Division 6—Costs of proceedings*

#### **What court proceeding costs is a legally assisted person taken to be entitled to, or responsible for, for the purpose of costs orders**

**30.(1)** This section applies if a legally assisted person is or was a party to a court proceeding and for the purpose of—

- (a) the court making or enforcing an order for costs, or deciding the entitlement to costs, in the proceeding; or
- (b) the taxing of costs payable to the person under the order or decision.

(2) The legally assisted person is taken to be responsible for paying—

- (a) the professional costs normally payable for the legal services given to the person in relation to the proceeding; and
- (b) any disbursements, including barristers' fees, and out-of-pocket expenses reasonably incurred in giving the services.

(3) The fact that a party to a proceeding is a legally assisted person does not affect—

- (a) the rights or liabilities of the party or another party to the proceeding; or
- (b) the court's discretion to make an order for costs.

*Example 1—*

Judgment is given in favour of a legally assisted person against an unassisted person—a costs order may be made in favour of the legally assisted person as though the first person were not a legally assisted person.

*Example 2—*

Judgment is given against a legally assisted person in favour of an unassisted person—a costs order may be made in favour of the unassisted person as though the first person were not a legally assisted person.

(4) On the taxation of costs payable under the terms of a judgment, order or settlement of a proceeding or claim to a legally assisted person, a disbursement item, whether for barristers' fees or otherwise, must not be disallowed merely because the amount has not been paid before the taxation.

### **Legal Aid's subrogation rights for costs**

**31.(1)** This section applies if, in a court proceeding, the court makes an order for costs in favour of a legally assisted person.

(2) Legal Aid is subrogated to the rights and remedies the legally assisted person has against the party against whom the costs order was made.

### **Legal Aid may pay costs awarded against legally assisted person**

**32.(1)** This section applies if—

- (a) a legally assisted person is a party to a court proceeding for which the legal assistance is given; and

*Legal Aid Queensland Act 1997*

---

(b) the court makes an order in the proceeding directing the person to pay costs incurred by another party to the proceeding.

(2) The legally assisted person or the other party may, by written notice, ask Legal Aid to pay to the other party, for the legally assisted person, an amount representing all or part of the costs mentioned in subsection (1)(b).

(3) Legal Aid may decide to pay the amount requested if—

- (a) Legal Aid considers it just and equitable for Legal Aid to pay the amount; and
- (b) Legal Aid considers that the person who made the request will suffer substantial hardship if Legal Aid does not pay it.

(4) Legal Aid may—

- (a) make payment of the amount conditional on the legally assisted person—
  - (i) reimbursing Legal Aid for the amount, whether by instalments or a lump sum payment; and
  - (ii) securing the reimbursement by a charge or mortgage, with or without interest charged; or
- (b) after paying the amount, ask the legally assisted person to reimburse Legal Aid for the amount, whether by instalments or a lump sum payment.

(5) An amount paid by Legal Aid under this section is taken to have been paid by the legally assisted person.

(6) In this section—

“**costs**”, incurred by another party to a proceeding means, if the legally assisted person is assisted for part only of a proceeding, the proportion of the costs attributable to the part of the proceeding.

“**legally assisted person**” includes a guardian, next friend, and the legal friend under the *Intellectually Disabled Citizens Act 1985*, acting for the legally assisted person.

***Division 7—Other provisions about Legal Aid’s recovery of its costs and expenses***

**How lawyer must deal with particular amounts recovered by a legally assisted person**

**33.(1)** This section applies if—

- (a) an amount actually recovered by a legally assisted person in a matter in which the person was legally assisted comes into the possession of a Legal Aid agent acting for the person in the matter; and
- (b) the amount, or part of it, is payable by the legally assisted person to Legal Aid under this part.

**(2)** The agent must pay to Legal Aid the amount, or part of it, necessary to discharge the amount payable by the legally assisted person to Legal Aid.

**(3)** Legal Aid’s receipt for an amount paid to it by an agent under subsection (2) is a sufficient discharge to the agent for the amount.

**(4)** In this section—

**“amount actually recovered”** by a legally assisted person in a matter in which the person was legally assisted includes an ex gratia payment to the person in the matter.

**How lawyer must deal with particular property, other than amounts, recovered by a legally assisted person**

**34.** If property actually recovered by a legally assisted person in a matter in which the person was legally assisted comes into the possession or control of a Legal Aid agent acting for the person in the matter, the agent must keep possession or control of the property until Legal Aid gives the agent written notice that the possession or control of the property may be relinquished.

**How Legal Aid agent must deal with contributions received for Legal Aid**

**35.** If legal assistance is given to a person by a Legal Aid agent under this

Act and the legally assisted person gives the agent an amount required as a contribution under the legal assistance approval, the agent must deal with the amount as directed by Legal Aid.

**Legal Aid's entitlement to repayment of costs if legally assisted person recovers property etc.**

**36.(1)** This section applies if—

- (a) a person was legally assisted in a matter; and
- (b) under a judgment, settlement or compromise in a proceeding for the matter, the person's ownership of or entitlement to property is preserved, or the person is entitled to recover property.

**(2)** Legal Aid may ask the person to pay to Legal Aid, and the person must pay, an amount that is not more than the sum of—

- (a) the normal professional costs, including solicitor and client costs, of the legal services given to the legally assisted person in the matter; and
- (b) any disbursements, including barristers' fees, and out-of-pocket expenses reasonably incurred in giving the services;

less the amount that is the money value of contributions made by the person to Legal Aid under a condition of the legal assistance approval.

**(3)** In deciding the amount payable by a legally assisted person under subsection (2), Legal Aid must have regard to—

- (a) the market value of the property of which the person's ownership or entitlement is preserved, or which is actually recovered, because of the judgment, settlement or compromise; and
- (b) any failure by the legally assisted person to take action to recover property recoverable because of the judgment, settlement or compromise, including a failure to comply with a direction given to the person by Legal Aid under section 37.

**(4)** The *Consumer Credit (Queensland) Act 1994* does not apply to an amount payable by a legally assisted person under this section.



**Legal Aid may direct legally assisted person to take action to recover particular property**

**37.(1)** Legal Aid may, by written notice, direct a legally assisted person to take action stated in the notice to ensure that property the person is entitled to recover because of a judgment, order, settlement or compromise mentioned in section 36(1) is actually recovered by the person.

**(2)** If the legally assisted person contravenes the direction, Legal Aid may, by written notice, direct the person to assign the person's right to recover the property to Legal Aid within 28 days after the day on which the notice is given.

**(3)** If the legally assisted person contravenes the direction given under subsection (2), at the end of the 28 days—

- (a) the person is taken to have assigned the person's right to recover the property to Legal Aid; and
- (b) Legal Aid is taken to stand in place of the legally assisted person, and may use the remedies and, if necessary, the name of the legally assisted person, in a proceeding to recover the property.

**Legal Aid may charge a legally assisted person interest on particular unpaid amounts**

**38.(1)** Legal Aid may charge a legally assisted person interest on an unpaid amount payable by the person under section 36(2).<sup>5</sup>

**(2)** If Legal Aid charges interest, it—

- (a) starts accruing 30 days after Legal Aid gives the person written notice of its decision to charge it; and
- (b) is payable at the rate for the time being prescribed under the *Supreme Court Act 1995*, section 48<sup>6</sup> for a judgment or order of a court of record.

---

<sup>5</sup> Section 36 (Legal Aid's entitlement to repayment of costs if legally assisted person recovers property etc.)

<sup>6</sup> *Supreme Court Act 1995*, section 48 (Interest on debt under judgment or order)

**How Legal Aid may recover particular unpaid amounts from a legally assisted person etc.**

**39.(1)** This section applies if an amount payable by a legally assisted person to Legal Aid under section 36(2) or 38(1)<sup>7</sup> is not paid when it becomes due.

**(2)** The amount may be recovered by Legal Aid as a debt in a court of competent jurisdiction.

**(3)** Until payment or recovery, the amount is a first charge in favour of Legal Aid on any property of which the person's ownership or entitlement is preserved, or which is actually recovered, because of the judgment, order, settlement or compromise mentioned in section 36(1).

**(4)** Legal Aid may enforce the charge as if it had been given to Legal Aid under a written agreement between Legal Aid and the legally assisted person.

**(5)** A conveyance or act done to defeat, or purporting to operate so as to defeat, the charge is void against Legal Aid.

**(6)** Subsection (5) does not apply to a transfer or conveyance of the property to a genuine purchaser for value without notice of Legal Aid's interest under the charge.

***Division 8—Legal Aid agents' fees*****How much is payable by Legal Aid to a Legal Aid agent etc.**

**40.(1)** Legal Aid must—

- (a) decide the fees payable by Legal Aid to a Legal Aid agent for legal assistance given by the agent under this Act; and
- (b) pay the fees to the agent.

**(2)** Subsection (1)(b) does not apply if the legal assistance is given on a voluntary basis.

---

<sup>7</sup> Section 36 (Legal Aid's entitlement to repayment of costs if legally assisted person recovers property etc.) or section 38 (Legal Aid may charge a legally assisted person interest on particular unpaid amounts)

**(3)** A fee may—

- (a) apply generally to all Legal Aid agents and matters or be limited in its application to—
  - (i) a particular Legal Aid agent or matter; or
  - (ii) particular classes of Legal Aid agents or matters; or
- (b) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

**(4)** If Legal Aid gives a person legal assistance under an agreement with a Legal Aid agent, the agent may receive only the following amounts for the legal service given—

- (a) an amount decided by Legal Aid as the fee for the service;
- (b) an amount for disbursements, including barristers' fees, and out-of-pocket expenses reasonably incurred by the agent;
- (c) another amount approved by Legal Aid, but only if any conditions imposed on the approval are complied with.

Maximum penalty—100 penalty units or 2 years imprisonment.

**(5)** An amount payable by Legal Aid to a Legal Aid agent under this section may be paid by Legal Aid allowing the agent to retain contributions given to the agent by legally assisted persons under this Act.

## **PART 3—LEGAL AID QUEENSLAND**

### *Division 1—Establishment*

#### **Establishment**

**41.** Legal Aid Queensland is established.

#### **Legal Aid is a body corporate etc.**

**42.(1)** Legal Aid—

- (a) is a body corporate with perpetual succession; and

- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

(2) Legal Aid does not represent the State.

(3) Legal Aid is—

- (a) a unit of public administration within the meaning of the *Criminal Justice Act 1989*; and
- (b) a statutory body within the meaning of—
  - (i) the *Financial Administration and Audit Act 1977*; and
  - (ii) the *Statutory Bodies Financial Arrangements Act 1982*.

(4) Judicial notice must be taken of the imprint of Legal Aid's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

### *Division 2—Functions and powers*

#### **Main functions**

43. Legal Aid's main functions are—

- (a) to ensure legal assistance is given to persons in the most effective, economic, commercial and efficient way; and
- (b) to manage its resources so as to make legal assistance available at a reasonable cost to the community and on an equitable basis throughout the State; and
- (c) to control and administer amounts given to it by the State or Commonwealth under a legal assistance arrangement or otherwise; and
- (d) to pursue innovative ways of giving persons legal assistance to minimise the need for individual legal services in the community.

#### **Other functions**

44.(1) Legal Aid's other functions are—

*Legal Aid Queensland Act 1997*

---

- (a) to ensure that its activities are carried out consistently with, and do not prejudice, the independence of the legal profession; and
- (b) to liaise, cooperate and, if it considers it desirable, make reciprocal arrangements with the following—
  - (i) other legal aid entities;
  - (ii) professional entities representing private lawyers;
  - (iii) other entities engaged or interested in giving legal assistance in the State or elsewhere; and
- (c) to liaise with professional entities representing private lawyers to facilitate the use, in appropriate circumstances, of services provided by private lawyers; and
- (d) to make maximum use of services offered, on a voluntary basis, by Legal Aid agents; and
- (e) to make its services available to persons eligible for legal assistance by establishing the local offices, and making other arrangements, it considers appropriate; and
- (f) to arrange for the provision of duty lawyer services at court sittings in the State as it considers appropriate; and
- (g) to endeavour to secure the services of language interpreters, marriage counsellors, mediators, welfare officers and other appropriate persons to help legally assisted persons in matters for which they are legally assisted; and
- (h) to the extent Legal Aid considers it appropriate, to encourage and allow law students to participate, on a voluntary basis and under professional supervision, in giving legal assistance by Legal Aid lawyers.

**(2)** Under a legal assistance arrangement, Legal Aid may give financial assistance to community legal centres or other entities in the State for legal assistance.

**(3)** In performing the function mentioned in subsection (2), Legal Aid must have regard to the amounts received, or likely to be received by, Legal Aid under this Act.

## General powers

**45.(1)** Legal Aid may—

- (a) acquire, hold or dispose of real and personal property; and
- (b) accept an amount or other property on trust, and act as trustee of the amount or other property; and
- (c) do anything else that a body corporate may lawfully do, including establishing a superannuation scheme for its employees.

**(2)** Despite anything in this Act, but subject to subsection (4), an amount or other property held by Legal Aid on trust must be dealt with by Legal Aid as trustee under the *Trusts Act 1973*.

**(3)** A provision of the *Trust Accounts Act 1973* about solicitors keeping accounts for amounts held by them on trust, or the audit of the accounts, does not apply to an amount held by Legal Aid on trust under this Act.

**(4)** The *Legal Practitioners Act 1995*, section 51<sup>8</sup> applies to an amount held by Legal Aid on trust for a person who is or has been legally assisted and, for this subsection, a reference in section 51 to a solicitor is taken to be a reference to Legal Aid.

**(5)** Legal Aid may invest an amount held by it on trust under the *Statutory Bodies Financial Arrangements Act 1982* and an amount resulting from the investment must be applied for this Act.

**(6)** Subsection (5) does not apply to an amount Legal Aid is required to deposit with the Queensland Law Society Incorporated under the *Legal Practitioners Act 1995*, section 51.

## Power to enter into legal assistance arrangements and other agreements

**46.(1)** Legal Aid may enter into legal assistance arrangements.

**(2)** A legal assistance arrangement with the Commonwealth must be approved by the Minister.

**(3)** The matters for which a legal assistance arrangement may provide include the following—

---

<sup>8</sup> *Legal Practitioners Act 1995*, section 51 (Solicitors trust bank accounts etc.)

- (a) the amounts to be made available by the Commonwealth, a State or another entity, for legal assistance under this Act;
- (b) the priorities to be observed in providing the legal assistance as between classes of persons or matters.

(4) To meet its obligations under a legal assistance arrangement, Legal Aid may enter into an agreement with a private lawyer, community legal centre or other entity to provide legal services as Legal Aid's agent.

### **Power to assist court**

**47.(1)** This section applies if—

- (a) a person is acquitted of a charge of an offence or discharged in respect of an offence in a proceeding; and
- (b) the Attorney-General refers a point of law arising out of the proceeding to the Court of Appeal for its consideration and opinion under the Criminal Code, section 669A(2);<sup>9</sup> and
- (c) no appearance is made by or for the person mentioned in paragraph (a) in the Court of Appeal on the reference.

(2) Legal Aid may appear on its own behalf on the reference and assist the court by way of argument as the court considers appropriate.

(3) In assisting the court, Legal Aid is taken to be performing its function of giving legal assistance under this Act.

---

<sup>9</sup> Criminal Code, section 669A (Appeal by Attorney-General)

## **PART 4—LEGAL AID BOARD**

### *Division 1—Establishment, composition etc.*

#### **Establishment**

**48.** The Legal Aid Board is established.

#### **Composition**

**49.(1)** The board consists of 5 persons appointed by the Governor in Council.

**(2)** One of the persons must be appointed, on nomination by the Minister, as an appropriate person to represent the interests of legally assisted persons.

**(3)** A person, other than the person appointed under subsection (2), is not eligible to be appointed by the Governor in Council unless the person has knowledge or experience in commerce, economics, finance, management or providing legal services.

**(4)** The Governor in Council is to appoint 1 board member as the board chairperson.

**(5)** A member is to be employed under this Act and not under the *Public Service Act 1996*.

#### **Appointment conditions**

**50.** A member of the board is appointed on conditions decided by the Governor in Council.

#### **Duration of appointment**

**51.(1)** A member of the board must be appointed for a term of not longer than 3 years decided by the Governor in Council.

**(2)** A member's office becomes vacant if the member—

(a) resigns by signed notice of resignation given to the Minister; or



- (b) is absent from 3 consecutive board meetings without the board's leave and without reasonable excuse; or
- (c) becomes incapable of performing the duties of a member because of physical or mental incapacity; or
- (d) is an undischarged bankrupt or is taking advantage of the laws in force relating to bankrupt debtors; or
- (e) is convicted of an indictable offence; or
- (f) is prohibited from being a director of a body corporate by the Corporations Law for a reason other than the person's age; or
- (g) is removed from office by the Governor in Council under subsection (3).

(3) The Governor in Council may remove a member from office for any reason or none.

### **Board's functions**

52. The board's functions are—

- (a) to responsibly manage Legal Aid; and
- (b) to ensure that Legal Aid achieves its objects under this Act.

### **Board's report to Minister**

53.(1) If asked by the Minister at any time, the board must give the Minister a report on any issue relevant to its functions.

(2) However, the Minister can not ask the board to give a report about legal assistance for a particular person.

### **Board's powers**

54. The board may—

- (a) exercise a power that Legal Aid may exercise; and
- (b) decide Legal Aid's priorities and strategies; and
- (c) issue guidelines about particular types of application that the

- board requires be referred to it for its decision; and
- (d) issue standards about giving legal services under this Act; and
  - (e) deal with a matter under guidelines mentioned in paragraph (c).

### **Delegation of board's powers**

**55.(1)** The board may delegate its powers under this Act to the chief executive officer.

**(2)** A delegation of a power may permit the subdelegation of the power to an appropriately qualified person.

## ***Division 2—Procedure***

### **Time and place of meetings**

**56.(1)** A meeting of the board is to be held at the time and place fixed by the board.

**(2)** The board must meet at least once in every 3 months.

**(3)** In addition, the board chairperson may convene a board meeting—

- (a) at any time; or
- (b) if asked by the chief executive officer.

**(4)** The board may hold meetings, or allow members to take part in its meetings by telephone, video link, or another form of communication that allows reasonably contemporaneous and continuous communication between the members taking part in the meeting.

**(5)** This section does not limit section 59.<sup>10</sup>

### **Quorum**

**57.** Any 3 board members are a quorum of the board.

---

<sup>10</sup> Section 59 (Decisions without meetings)

## **Decisions**

**58.(1)** The decision in which a majority of the board members voting agrees is the board's decision.

**(2)** If the voting is equal, the presiding member's decision is the board's decision.

**(3)** The presiding member is the board chairperson or, if the chairperson is absent, the member chosen by the members present.

## **Decisions without meetings**

**59.(1)** If each board member signs a document stating that the member agrees with the decision stated in the document, the decision is taken to be made by the board at a meeting held on—

- (a) if the document is signed by all members on the same day—the day on which it is signed; or
- (b) otherwise—the day on which the last member signs it.

**(2)** Each board member must be given a copy of the decision made under subsection (1).

**(3)** In subsection (1)(a)—

**“document”** includes 2 or more documents stating the decision in identical terms.

## **Minutes**

**60.** The board must keep minutes of its meetings.

## **Procedure**

**61.** Subject to this part, the board may decide its own procedures.

## **Conflicts of interest**

**62.(1)** This section applies if a board member has a direct or indirect pecuniary interest in a matter being, or to be, considered by the board that conflicts or may conflict with the discharge of the member's duties in

considering the matter.

(2) The member must disclose the nature of the interest and conflict at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting and, unless the board decides otherwise—

- (a) the member must not be present during the board's deliberation of the matter; and
- (b) must not take part in the board's decision on the matter.

### *Division 3—Attorney-General's directions*

#### **Attorney-General may give board directions**

**63.(1)** The Attorney-General may give the board a written direction about the following—

- (a) Legal Aid performing its functions or exercising its powers;
- (b) Legal Aid's policies, priorities or guidelines, including priorities in legal assistance funding.

(2) The Attorney-General may only, and must, give a direction under subsection (1) relating to legal assistance given under a legal assistance arrangement with the Commonwealth, if the Commonwealth Attorney-General gives the Attorney-General a written request for the direction.

(3) A direction under subsection (1) can not be about giving legal assistance to a particular person.

(4) The board must comply with a direction given under subsection (1) or (2).

(5) The Attorney-General must table in the Legislative Assembly—

- (a) a copy of any direction given to the board under subsection (1); and
- (b) if the direction was given on the request of the Commonwealth Attorney-General—a copy of the request.

(6) The copy of a direction or request mentioned in subsection (5) must be tabled in the Legislative Assembly within 10 sitting days after the direction is given to the board.

## **PART 5—OTHER PROVISIONS ABOUT LEGAL AID QUEENSLAND**

### *Division 1—Chief executive officer and employees*

#### **Chief executive officer of Legal Aid**

**64.(1)** Legal Aid is to have a chief executive officer.

(2) The chief executive officer is to be appointed by the Governor in Council, by gazette notice, on the board's recommendation.

(3) The chief executive officer is to be appointed under this Act and not under the *Public Service Act 1996*.

#### **Qualifications for appointment**

**65.** A person is eligible for appointment as chief executive officer only if the person is a lawyer with at least 5 years experience as a lawyer.

#### **Term of office**

**66.** The chief executive officer is to be appointed for a term of not longer than 5 years but is eligible for reappointment.

#### **Chief executive officer's responsibilities**

**67.** The chief executive officer is, under the board, responsible for—

- (a) controlling Legal Aid's day to day administration in accordance with—
  - (i) priorities and strategies decided by the board; and

- (ii) directions given to the chief executive officer by the board;  
and
- (b) providing legal services to legally assisted persons under this Act;  
and
- (c) arranging and supervising the provision of legal services to  
legally assisted persons by Legal Aid lawyers.

### **Things done by chief executive officer**

**68.** Anything done in the name of, or for, Legal Aid by its chief executive officer is taken to have been done by Legal Aid.

### **Delegation by chief executive officer**

**69.** The chief executive officer may delegate the chief executive officer's powers under this Act to an appropriately qualified person.

### **Employees**

**70.(1)** Legal Aid may engage the employees it considers necessary to perform its functions.

**(2)** Legal Aid may decide its employees' terms of employment.

**(3)** The employees are to be employed under this Act and not under the *Public Service Act 1996*.

## ***Division 2—Legal practice***

### **External employment**

**71.** A Legal Aid lawyer may practise as a lawyer, or engage in paid employment, other than for Legal Aid, only with the board's written approval.

**Particular provisions of the Legal Practitioners Act 1995 and Queensland Law Society Act 1952 do not apply to Legal Aid lawyers**

72. The *Legal Practitioners Act 1995*, part 2 and *Queensland Law Society Act 1952*, sections 10 to 11A and part 3 do not apply to a Legal Aid lawyer performing the lawyer's duties under this Act.<sup>11</sup>

**Legal Aid taken to be solicitors firm etc.**

73. In providing legal services—

- (a) Legal Aid is taken to be a firm of solicitors practising lawfully in the State and retained by a legally assisted person to act for the person; and
- (b) a Legal Aid lawyer is taken to be employed by the firm.

**Professional conduct**

74. Legal Aid, or a Legal Aid lawyer, in performing the duties of a lawyer under this Act—

- (a) must observe the rules and standards of professional conduct and ethics a private lawyer is required to observe; and
- (b) is subject to the professional obligations to which a private lawyer is subject, by law or custom, in legal practice.

**Application of legal professional privilege to Legal Aid and Legal Aid lawyers**

75.(1) This section applies to communications made in or for the performance of Legal Aid's following functions—

---

<sup>11</sup> *Legal Practitioners Act 1995*, part 2 (Provisions from Costs Act 1867) *Queensland Law Society Act 1952*—

- section 10 (When council may assume control over practitioner's trust accounts)
- section 11 (Powers of the council with respect to trust accounts of deceased practitioners etc.)
- section 11A (Appointment of receiver of trust property)
- part 3 (Legal practitioners' fidelity guarantee fund)

- (a) deciding applications for legal assistance;
- (b) acting as a lawyer for a legally assisted person;
- (c) a function incidental to a function mentioned in paragraph (a) or (b).

(2) Confidential communications between a legally assisted person and Legal Aid or a Legal Aid lawyer are subject to legal professional privilege.

(3) Without limiting subsection (2), the communications may not be disclosed by Legal Aid or a Legal Aid lawyer without the legally assisted person's consent.

(4) Subject to this Act, this section has effect despite any other law.

### **Legal Aid and its employees' right of practice**

**76.(1)** This section—

- (a) applies for the performance by Legal Aid of its functions; and
- (b) does not affect a right to practise as a barrister or solicitor, or perform a barrister's or solicitor's functions, or a right of audience in a court, that a Legal Aid lawyer has apart from this section.

(2) A Legal Aid lawyer—

- (a) may practise as a solicitor and perform a solicitor's functions in the State; and
- (b) has a right of audience in a court of the State.

(3) A Legal Aid lawyer may perform the functions of a lawyer under this Act only if—

- (a) the lawyer holds a current practising certificate under the *Legal Practitioners Act 1995*; or
- (b) the lawyer's name is on the roll of barristers of the Supreme Court.

(4) A Legal Aid lawyer practising as a solicitor or performing a solicitor's functions has the rights and privileges of a private lawyer who is a solicitor.



(5) A Legal Aid lawyer appearing for a legally assisted person in a court under this section has the same protection and immunity as if the lawyer were a private lawyer who is a barrister.

### **Application of Queensland Law Society Act 1952 to Legal Aid lawyers who are solicitors**

77. The provisions of the *Queensland Law Society Act 1952* regulating the way in which complaints against solicitors for malpractice, professional misconduct, or unprofessional conduct or practice may be investigated and dealt with, apply to a Legal Aid lawyer who is a solicitor within the meaning of that Act in the same way as it applies to other solicitors within the meaning of the Act.

### **Application of laws about conduct to Legal Aid lawyers who are barristers**

78. Subject to section 73(2),<sup>12</sup> the provisions of any law about the conduct of barristers apply to a Legal Aid lawyer who is a barrister in the same way as they apply to other barristers under the provisions.

### **Solicitor on the record**

79.(1) This section applies if a person who is receiving legal assistance from a Legal Aid lawyer is a party to a court proceeding for which a document is required or allowed to be signed by the party's solicitor.

(2) The signature of a Legal Aid lawyer authorised by the board to sign documents for Legal Aid for this section, is taken to be the signature of the party's solicitor.

---

<sup>12</sup> Section 73 (Legal Aid taken to be solicitors firm etc.)

## PART 6—MISCELLANEOUS

### Protection from liability

**80.(1)** A Legal Aid employee or a member of the board does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

**(2)** If subsection (1) prevents a civil liability attaching to an employee or a member of the board, the liability attaches instead to Legal Aid.

### Legal Aid not liable for particular acts or omissions of Legal Aid agents

**81.** Legal Aid is not liable for an act done, or omission made by a Legal Aid agent outside the scope of the agent's actual or apparent authority.

### Secrecy

**82.(1)** This section applies to a person who is or was—

- (a) a Legal Aid employee under this Act; or
- (b) a commissioner, officer of the commission, or member of a legal aid committee, review committee or consultative committee under the former Act; or
- (c) a member of the board.

**(2)** A person to whom this section applies (the “**first person**”) must not, directly or indirectly, other than for this Act or in a proceeding under this Act—

- (a) give a person, make a record of, or use information acquired about a person's affairs by the first person under this Act or the former Act; or
- (b) give a person a document acquired about someone else's affairs under this Act or the former Act.

Maximum penalty—50 penalty units or 6 months imprisonment.

**(3)** In a court proceeding under this Act, the first person is not required

*Legal Aid Queensland Act 1997*

---

to—

- (a) give the court a document about someone else's affairs of which the first person has custody, or to which the first person has access, under this Act or the former Act; or
- (b) give the court information about someone else's affairs obtained by the first person under this Act or the former Act.

(4) Subsection (3) does not apply if the court considers it necessary in the interests of justice that the document or information be given.

(5) Subsection (2) does not prevent a person from giving a document or information to the following—

- (a) Bar Association of Queensland;
- (b) Barristers' Board;
- (c) Solicitors' Board;
- (d) Queensland Law Society Incorporated;
- (e) the entity established under the *Queensland Law Society Act 1952* to hear and decide charges of malpractice, professional misconduct or unprofessional conduct or practice brought against a practitioner under the Act;
- (f) a conferencing chairperson under part 2, division 4;<sup>13</sup>
- (g) under guidelines decided by Legal Aid—a person to whom the document or information is required to be given under a lawfully issued search warrant;
- (h) with the board's consent—another entity to whom Legal Aid considers it is in the public interest that the document or information be given.

(6) Legal Aid may impose the conditions, if any, it considers appropriate on the giving of a document or information under subsection (5).

(7) Without limiting subsection (6), Legal Aid may impose conditions restricting the use that may be made of the document or information given to protect the anonymity of a legally assisted person, or person who has applied for legal assistance, to whom the document or information relates.

---

<sup>13</sup> Part 2, division 4 (Alternative dispute resolution)

(8) A person to whom a document or information is given under subsection (5) must comply with any condition imposed under subsection (6).

Maximum penalty—50 penalty units or 6 months imprisonment.

(9) This section does not affect a law or rule of practice or procedure about the discovery of documents in a proceeding for which legal assistance is given to a person under this Act.

### **Legal Aid employee’s duty to give information**

**83.(1)** If Legal Aid or the board considers it necessary to enable it to exercise its functions under this Act, Legal Aid or the board may ask a Legal Aid employee to give Legal Aid or the board any relevant information.

(2) The employee must comply with the request despite any privilege arising between the employee and a legally assisted person.

Maximum penalty—20 penalty units.

(3) In this section—

“**relevant information**” means information in the employee’s possession or to which the employee has access that is relevant to—

- (a) providing legal assistance to a person under this Act; or
- (b) the matter for which a person is or was legally assisted.

### **Offence of misrepresentation**

**84.(1)** A person must not, without reasonable excuse, in applying for legal assistance—

- (a) make a false or misleading statement; or
- (b) give Legal Aid a document that is false or misleading in a material particular.

Maximum penalty—20 penalty units or 3 months imprisonment.

(2) A charge under subsection (1) may allege a statement or document is false or misleading, without specifying which.

(3) An applicant for legal assistance, or a legally assisted person, must not, with intent to deceive or mislead Legal Aid, withhold relevant information the person is required to give Legal Aid under this Act.

Maximum penalty—20 penalty units or 3 months imprisonment.

(4) If—

- (a) a legally assisted person is convicted of an offence against subsection (1) or (2) in relation to the person's application for legal assistance; and
- (b) Legal Aid incurred an expense in giving the assistance;

the court may, in addition to imposing a penalty for the offence, order the person to pay the amount of the expense to Legal Aid.

### **Proceedings under Act**

**85.(1)** A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

(3) In a proceeding under this Act, it is not necessary to prove any of the following matters, unless evidence contrary to the matter is given—

- (a) the establishment of Legal Aid;
- (b) the authority of a Legal Aid employee to start, or appear in, the proceeding;
- (c) the appointment of a Legal Aid employee.

### **Evidence**

**86.** A certificate purporting to be given by Legal Aid and stating any of the following matters is evidence of the matter—

- (a) Legal Aid gave a stated person legal assistance for a stated matter;
- (b) Legal Aid incurred expense of a stated amount in giving the legal

assistance;

- (c) a stated amount was, on the day stated in the certificate, payable by a stated legally assisted person to Legal Aid.

### **Approval of forms**

**87.** The board may approve forms for use under this Act.

### **Regulation-making power**

**88.(1)** The Governor in Council may make regulations under this Act.

**(2)** Without limiting subsection (1), a regulation may prescribe anything necessary or convenient to be prescribed—

- (a) to enable a legal assistance arrangement to be made; or  
(b) for performing or giving effect to a legal assistance arrangement.

**(3)** A regulation may make provision about a matter for which—

- (a) it is necessary or convenient to assist the transition to the performance by Legal Aid of functions previously performed by the former entity; and  
(b) this Act does not make provision or enough provision.

**(4)** Subsection (3) and this subsection, and any regulation made under subsection (3), expire 2 years after they commence.

## **PART 7—TRANSITIONAL PROVISIONS**

### **Former entity**

**89.** The former entity is abolished and its members go out of office.

### **Transitional board's decisions**

**90.(1)** This section applies to any decision made by the committee

administratively established by the Governor in Council under the name of the Board of Legal Aid Queensland (Transitional) (the “**transitional board**”) if the decision—

- (a) could be made by the Legal Aid Board if it were established; and
- (b) was made by the transitional board in contemplation of the establishment of the Legal Aid Board.

(2) From the day the Legal Aid Board is established, the decision is taken to be a decision of the Legal Aid Board.

(3) For the purposes of deciding the period within which a proceeding may be taken against the decision, the decision is taken to have been made by the Legal Aid Board on the day it is established.

(4) This section expires 1 year after it commences.

### **Consultative committees, legal aid committees and review committees**

91. The consultative committees, legal aid committees and review committees established under the former Act are abolished and the members go out of office.

### **Existing decisions and directions of, and delegations by, former entity’s Director**

92.(1) If the context permits, a decision or direction of, or delegation by, the Director of Legal Aid under the former Act is taken to continue as a decision or direction of, or delegation by, the chief executive officer.

(2) Subsection (1) does not apply to a decision or direction that is inconsistent with a decision made by the transitional board.

### **Review of decisions**

93.(1) If—

- (a) a person had requested a decision be reconsidered or reviewed by a review committee or legal aid committee (the “**reviewing authority**”) under the former Act before the commencement of this section; and

- (b) the decision had not been reconsidered or reviewed before the commencement;

the board may reconsider or review, or continue to reconsider or review, the decision under the former Act as if that Act had not been repealed and the board were the reviewing authority.

(2) If, before the commencement of this section, a person was entitled under the former Act to request a decision made under that Act be reconsidered or reviewed, the person may, after the commencement, request its reconsideration or review, and the board may reconsider or review it as if—

- (a) the former Act had not been repealed; and  
(b) the former entity were Legal Aid Queensland; and  
(c) the board were the reviewing authority.

### **Assets**

**94.(1)** The former entity's assets, including the Legal Aid Fund established under the former Act, vest in Legal Aid.

(2) To remove any doubt, a reserve remaining in the fund mentioned in subsection (1) immediately before the commencement of this section, vests in Legal Aid.

(3) However, nothing in this section prevents an entity's entitlement to the reserve immediately before the commencement being taken into account in a legal assistance arrangement.

(4) From the commencement of this section, any amount payable to or out of the Legal Aid Fund is payable to, or by, Legal Aid.

### **Rights and liabilities**

**95.** The former entity's rights and liabilities vest in Legal Aid.

### **Revesting of assets, rights and liabilities**

**96.(1)** Within 6 months after the commencement of this section, a regulation may—



- (a) re-vest in a stated entity an asset or liability vested in Legal Aid under section 94 or 95; and
- (b) make provision about a matter for which—
  - (i) it is necessary or convenient to assist the re-vesting; and
  - (ii) this Act does not make provision or enough provision.

(2) This section, and any regulation made under it, expires 1 year after the commencement.

### **Proceedings**

**97.(1)** A proceeding by or against the former entity that has not ended before the commencement of this section, may be continued and finished by or against Legal Aid.

(2) If a proceeding could have been taken by or against the former entity, if the entity had continued to exist, the proceeding may be taken by or against Legal Aid.

### **Existing arrangements or contracts**

**98.(1)** If the former entity was a party to an arrangement or contract in force immediately before the commencement of this section, Legal Aid is taken to be the party.

(2) Any condition imposed by the former entity on the provision of legal assistance under the former Act in any way may, if the context permits, be taken to be a condition imposed by Legal Aid on the legal assistance under this Act.

### **Former entity's director**

**99.(1)** The person holding office as Director of Legal Aid under the former Act immediately before the commencement of this section is taken to have been appointed as the chief executive officer of Legal Aid for the remainder of the person's term of appointment.

(2) The person remains entitled to all existing and accruing rights of employment.

(3) The person's service as Director of the former entity is, for all employment purposes, taken to be continuous with, and part of, the person's service as chief executive officer under this Act.

### **Former entity's Assistant Directors and existing employees**

**100.(1)** A person who was an Assistant Director of Legal Aid or employee of the former entity immediately before the commencement of this section is taken to be a Legal Aid employee employed under this Act.

(2) The person remains entitled to all existing and accruing rights of employment.

(3) The person's service as an Assistant Director or employee of the former entity is, for all employment purposes, taken to be continuous with, and part of, the person's service as a Legal Aid employee under this Act.

(4) An Assistant Director or employee of the former entity is not entitled to receive a payment or other benefit because of the repeal of the former Act or the abolition of an office under the former Act.

### **References to Legal Aid Act 1978**

**101.** In an Act or document, a reference to the *Legal Aid Act 1978* may, if the context permits, be taken as a reference to this Act.

### **References to former entity**

**102.** In an Act or document, a reference to the former entity may, if the context permits, be taken as a reference to Legal Aid.

### **References to former director**

**103.** In an Act or document, a reference to the Director of Legal Aid under the former Act may, if the context permits, be taken as a reference to the chief executive officer.

**SCHEDULE****DICTIONARY**

section 4

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

The level at which a person is employed within Legal Aid.

**“approved form”** see section 87.

**“board”** means the Legal Aid Board established under section 48.

**“chief executive officer”** means the chief executive officer of Legal Aid appointed under section 64.

**“contribution”** includes an amount and another form of contribution.

**“court”** means a court, tribunal or other entity before which evidence may be taken on oath.

**“duty lawyer services”** means the following legal services given to a person at a court proceeding by a lawyer attending the proceeding other than by previous arrangement with the person—

- appearing for the person at the proceeding
- giving legal advice to the person for the proceeding.

**“former Act”** means the *Legal Aid Act 1978*.

**“former entity”** means the Legal Aid Commission of Queensland established under the former Act.

**“Legal Aid”** means Legal Aid Queensland established under section 41.

**“Legal Aid agent”** means an entity with whom Legal Aid has entered into an agreement under section 46(4).

**“Legal Aid employee”** includes the chief executive officer.

**“Legal Aid lawyer”** means a Legal Aid employee who is a lawyer.

## SCHEDULE(continued)

**“legal assistance”** see section 5.

**“legal assistance arrangement”** see section 7.

**“legally assisted person”** see section 6.

**“private lawyer”** means a lawyer, other than a Legal Aid lawyer, who may practise lawfully in the State.

**“specified criminal proceeding”** means—

- (a) for legal assistance under a legal assistance arrangement with the Commonwealth—a proceeding specified in the arrangement; or
- (b) otherwise—
  - (i) a criminal proceeding before a court other than—
    - (A) a Magistrates Court; or
    - (B) the Childrens Court exercising jurisdiction other than the jurisdiction conferred by the *Juvenile Justice Act 1992* in relation to an indictable offence; or
  - (ii) a committal proceeding for an indictable offence punishable on conviction by imprisonment of more than 14 years; or
  - (iii) a criminal proceeding before a court mentioned in subparagraph (i) or (ii) that Legal Aid decides; or
  - (iv) another proceeding, other than a civil proceeding, that the board decides.

**“transitional board”** see section 90.

## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	51
3	Key . . . . .	51
4	List of earlier reprints . . . . .	52
5	List of legislation . . . . .	52
6	List of annotations . . . . .	52

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 16 December 1997. Future amendments of the Legal Aid Queensland Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 1997

## 5 List of legislation

### **Legal Aid Queensland Act 1997 No. 18**

date of assent 15 May 1997

ss 1–2, 90 commenced on date of assent

remaining provisions commenced 1 July 1997 (see s 2(2))

as amended by—

### **Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82**

ss 1–2, pt 17

date of assent 5 December 1997

commenced on date of assent

## 6 List of annotations

### **Protection from liability**

s 80 amd 1997 No. 82 s 69

### **Secrecy**

s 82 amd 1997 No. 82 s 70

### **Regulation-making power**

s 88 (3)–(4) exp 1 July 1999 (see s 88(4))

## **PART 7—TRANSITIONAL PROVISIONS**

pt hdg amd R1 (see RA s 7(1)(k))

### **Division 1—Transitional provisions**

div hdg om R1 (see RA s 39)

### **Transitional board's decisions**

s 90 exp 15 May 1998 (see s 90(4))

**Revesting of assets, rights and liabilities****s 96** exp 1 July 1998 (see s 96(2))**Division 2—Repeal****div 2 (s 104)** om R1 (see RA s 40)