

# House of Assembly

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South Australia

## Legal Services Commission (Miscellaneous) Amendment Bill 2016

A BILL FOR

An Act to amend the *Legal Services Commission Act 1977*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Legal Services Commission (Miscellaneous) Amendment Act 2016*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## **Part 2—Amendment of *Legal Services Commission Act 1977***

### **4—Amendment of section 5—Interpretation**

Section 5(1)—after the definition of *legal practitioner* insert:

*Legal Profession Reference Committee*—see section 11A;

### **5—Amendment of section 6—Constitution of Legal Services Commission**

Section 6(4)—delete subsection (4) and substitute:

- (4) The Commission consists of the following members:
- (a) 1 (the Chairperson) will be—
    - (i) a person holding judicial office; or
    - (ii) a legal practitioner of not less than 5 years standing, appointed by the Governor on the nomination of the Attorney-General; and
  - (b) 3 persons of whom—
    - (i) at least 1 must have experience in financial management; and
    - (ii) at least 1 must, in the opinion of the Attorney-General, be an appropriate person to represent the interests of assisted persons, appointed by the Governor on the nomination of the Attorney-General; and
  - (c) the Director.
- (5) The Attorney-General must consult with the Law Society and the South Australian Bar Association Incorporated before making a nomination under subsection (4)(b)(ii).

## 6—Amendment of section 8—Quorum etc

- (1) Section 8(1)—delete subsection (1) and substitute:
  - (1) Subject to this Act, 3 members of the Commission constitute a quorum of the Commission.
- (2) Section 8(1a)—delete subsection (1a)
- (3) Section 8(4)—delete "Chairman" wherever occurring and substitute in each case:  
Chairperson

## 7—Insertion of section 11A

After section 11—insert:

### 11A—Legal Profession Reference Committee

- (1) The Commission must establish a committee (the *Legal Profession Reference Committee*) to—
  - (a) advise the Commission in relation to—
    - (i) any matter referred to it by the Commission; or
    - (ii) any of the Commission's functions under the Act; or
  - (b) perform any other function assigned to the Committee by this Act.
- (2) The Legal Profession Reference Committee will consist of 7 members appointed by the Commission, of whom—
  - (a) 1 will be the Chairperson of the Commission; and
  - (b) 1 will be the Director; and
  - (c) 1 will be an employee of the Commission nominated by the Commission; and
  - (d) 2 will be nominated by the Law Society; and
  - (e) 2 will be nominated by the South Australian Bar Association Incorporated.
- (3) Members of the Legal Profession Reference Committee will hold office on such terms and conditions as the Commission thinks fit.
- (4) Subject to this Act and any directions of the Commission, the Legal Profession Reference Committee may determine its own procedures.

## 8—Amendment of section 12—Advisory and other committees

Section 12—after "establish" insert:

such other

## **9—Insertion of sections 12A and 12B**

After section 12 insert:

### **12A—Appeals**

- (1) An appeal against a decision of the Director under Part 4 must be heard by a panel of 3 persons as constituted by the Commission as follows—
  - (a) at least 1 person must be a member of the Commission (other than the Director); and
  - (b) depending on the number of members of the Commission under paragraph (a), may include up to 2 assessors selected by the Commission from the panel of assessors established under section 12B.
- (2) The presiding member of a panel hearing an appeal will be—
  - (a) if the constitution of the panel includes the Chairperson of the Commission—the Chairperson; or
  - (b) if the constitution of the panel does not include the Chairperson of the Commission—
    - (i) in the case of a panel that includes only 1 member of the Commission—that member; or
    - (ii) in the case of a panel that includes 2 or more members of the Commission—the member agreed by those members of the Commission.
- (3) A matter required to be decided by the panel will be decided according to the opinion of the majority of them but, if their opinions on the matter are equally divided, the question is to be decided according to the opinion of the presiding member.

### **12B—Panel of assessors**

- (1) The Commission must establish a panel of persons who may sit as assessors consisting of persons who, in the opinion of the Commission, have appropriate qualifications and experience to hear appeals against decisions of the Director.
- (2) A member of the panel is to be appointed by the Commission for a term of office not exceeding 3 years and on conditions determined by the Commission and specified in the instrument of appointment.
- (3) A member of the panel is, on the expiration of a term of office, eligible for reappointment.
- (4) A member of the panel who has a personal or a direct or indirect interest in a matter before the Commission is disqualified from participating in the hearing of the matter.

## **10—Amendment of section 13—Delegation**

Section 13—after subsection (2) insert:

- (2a) To avoid doubt, subsection (2)(b) does not apply to, or in respect of, the inclusion of assessors on a panel hearing an appeal under section 12A.

## **11—Amendment of section 18C—Director to determine scale of fees for professional legal work**

Section 18C—delete "Law Society" and substitute:

Legal Profession Reference Committee

## **12—Amendment of section 19—Determination and payment of legal assistance costs to legal practitioners (other than Commission practitioners)**

Section 19(7)(b)—delete "Law Society" and substitute:

Legal Profession Reference Committee

## **13—Amendment of section 31A—Secrecy**

- (1) Section 31A(1)(c)—after "committee" insert:

(including the Legal Profession Reference Committee)

- (2) Section 31A(1)—after paragraph (c) insert:

- (ca) a member or former member of the panel of assessors established under section 12B; or

## **14—Amendment of section 33A—Immunity**

Section 33A(1)—after "the Commission" first occurring insert:

or a member of the panel of assessors established under section 12B

## **15—Amendment of section 34—Regulations**

Section 34(2)—delete subsection (2)

# **Schedule 1—Transitional provision**

## **1—Transitional provision**

- (1) Despite any other provision of the principal Act, a member of the Commission, other than the Chairman or the Director of the Commission, holding office immediately before the relevant day will cease to hold office on the relevant day and any contract of employment, agreement or arrangement relating to the office held by that member is terminated by force of this clause at the same time (and no right of action will arise against a Minister or the State on account of that termination).

- (2) In this clause—

*principal Act* means the *Legal Services Commission Act 1977*;

*relevant day* means the day on which this clause comes into operation.