

Legal Services Commission Functions 2010-11



The Commissioners. Front (L–R): Mr Hamish Gilmore, Ms Dymphna Eszenyi, Ms Maurine Pyke QC, Mr Michael Dawson.
Back (L–R): Ms Wendy Purcell, Mr Andrew English, Mr David Meyer, Mr David Mazzone, Mr Michael Burgess, Ms Tracee Micallef.

The Legal Services Commission ('the Commission') was established under the Legal Services Commission Act 1977 ('the Act'). Under section 10(1) of the Act, the Commission's functions are to:

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| b) provide, or arrange for the provision of, legal assistance in accordance with this Act; | of their rights, powers, privileges and duties under the laws of the Commonwealth or the State; | hb) where it is practicable and appropriate to do so, make use of the services of interpreters, marriage guidance counsellors and social workers for the benefit of assisted persons; |
| c) determine the criteria upon which legal assistance is to be granted in pursuance of this Act; | g) inform the public by advertisement or other means of the services provided by the Commission, and the conditions upon which those services are provided; | i) encourage and permit law students to participate, so far as the Commission considers practicable and proper to do so, on a voluntary basis and under professional supervision, in the provision of legal assistance by the Commission; |
| d) conduct research with a view to ascertaining the needs of the community for legal assistance, and the most effective means of meeting those needs; | h) cooperate and make reciprocal arrangements with persons administering schemes of legal assistance in other States and Territories of the Commonwealth or elsewhere; | j) make grants to any person or body of persons carrying out work that will in the opinion of the Commission advance the objects of this Act; and |
| e) establish such local offices and other facilities as the Commission considers necessary or desirable; | ha) cooperate with any body established by the Commonwealth for the purpose of the administration of legal aid and provide it with such statistical and other information as it may reasonably require; | k) perform such other functions as the Attorney-General may direct. |
| f) initiate and carry out educational programs to promote an understanding by the public (and especially those sections of the public who may have special needs) | | |

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Eligibility for legal aid

Section 10(2) of the Act requires the Commission, in setting criteria for eligibility for legally aided representation, to have regard to the following principles:

- a) that legal assistance should be granted in pursuance of this Act where the public interest or the interests of justice so require; and
- b) that, subject to paragraph (a) of this subsection, legal assistance should not be granted where the applicant could afford to pay in full for that legal assistance without undue financial hardship.

Special considerations

Section 11 of the Act requires the Commission in the exercise of its powers and functions to:

- a) seek to ensure legal assistance is provided in the most efficient and economical manner;
- b) use its best endeavours to make legal assistance available to persons throughout the State;
- c) have regard to the recommendations of any body established by the Commonwealth for the purpose of advising on matters pertaining to the provision of legal assistance;
- d) have regard to the following factors:
 - i) the need for legal assistance to be readily available and easily accessible to disadvantaged persons;
 - ii) the desirability of enabling all assisted persons to obtain the services of legal practitioners of their choice;
 - iii) the importance of maintaining the independence of the legal profession;
 - iv) the desirability of enabling legal practitioners employed by the Commission to utilise and develop their expertise and maintain their professional standards by conducting litigation and doing other kinds of professional legal work.

Who can get Legal Aid

Legal aid is not granted for all legal problems. For example, if it is a criminal matter, there must be a reasonable likelihood of imprisonment. Family law matters must usually involve a genuine dispute over children and reasonable steps must have been taken to try and resolve the dispute. In assessing an application for aid the Commission takes into account personal income and assets plus that of anyone with whom the applicant has a financial relationship. In assessing the application for a grant of aid the Commission considers:

- **income**—money received after allowing for tax, childcare, reasonable rent or mortgage payments and the number of children cared for
- **assets**—savings, investments and property, excluding the home the applicant lives in, a car and household furniture of average value
- **chances of success**—a merit test is applied to assess the matter has a reasonable chance of success.

Legal aid may be granted subject to a financial contribution or a charge can be placed over real estate, so that legal costs can be paid at a later date when the property is sold or transferred.

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What the Commission does

The Commission provides a range of legal services to members of the public:

- legal representation to people eligible under criteria set by the Commission in accordance with Section 10(2) of the Act
- free legal advice and minor legal assistance, either at a Commission office by appointment, in a gaol or over the telephone
- a free duty solicitor service to eligible people attending metropolitan and some country State and Federal Magistrates Court, Youth Courts and the Family Court who have not yet consulted a legal practitioner
- a range of free publications explaining the law in simple terms, available from Commission offices, various community organisations and on the Commission website
- Law Handbook Online at www.lsc.sa.gov.au provides plain english information
- an extensive range of legal education programs, some free and others fee-paying

Commission members

The membership of the Commission is prescribed in Section 6 of the Act.

There are ten members; nine of whom are appointed by the Governor on the nomination of various bodies, the tenth being the Director. Membership of the Commission is set out in *Appendix 2*.

Public participation in developing Commission policy

Under the Act, the Commission is responsible for developing policy as to how the Act is applied. One Commissioner appointed by the Attorney-General represents the interests of assisted persons in that process. In addition, the Commission consults regularly with the State and Commonwealth Governments, the Courts, representative bodies of the legal profession, community legal centres and other community organisations. Members of the public are allowed access to certain Commission documents available under the *Freedom of Information Act 1991*. Information about access is set out in *Appendix 1*.

Organisational structure

A chart showing the organisational structure of the Commission is shown as *Appendix 3*.

Community Involvement 2010-11

During the year members of staff, in their own time, contributed to the development of their respective professional associations as well as the other groups referred to in *Appendix 4*.