

## Legal Assistance Bill.

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### EXPLANATORY NOTE.

THIS Bill makes provision for the granting of legal assistance to persons of limited means and with limited income, and specifies the conditions under which such assistance will be given.

Amongst other matters dealt with in the Bill are—

- (a) the appointment of a Public Solicitor who exercises certain administrative functions and who also may act for assisted persons;
- (b) the assignment of solicitor and counsel when the Public Solicitor does not himself act;
- (c) the waiver of court fees, and the waiver by the Minister of certain other fees in particular cases;
- (d) the exemption of an assisted person from liability for costs, except in cases more particularly set out in the Bill.

The Bill also amends the Poor Persons Legal Remedies Act, 1918, in order to make it clear that out of pocket expenses referred to in the rules are limited to actual disbursements.

[CONFIDENTIAL]  
(Rough Draft for Consideration Only.)

No. , 1942.

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A BILL

To make provision for the granting of legal assistance to persons of limited means and with limited income; to provide for the appointment of a Public Solicitor and to define his powers, authorities, duties and functions; to amend the Poor Persons Legal Remedies Act, 1918, and certain other Acts in certain respects; and for purposes connected therewith.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Legal Assistance Act, 1942."

Short title and commencement.

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(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter  
5 otherwise indicates or requires,—

“Assisted person” means a person who has been granted a certificate that he is entitled to legal assistance under this Act, and, where such person is an infant, includes his next friend;

10 “Prescribed” means prescribed by this Act or by the regulations;

“Public Solicitor” means the person for the time being holding the office of Public Solicitor under this Act;

15 “Regulations” means regulations made under this Act.

3. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint a person to be the Public  
20 Solicitor.

The person so appointed shall be a solicitor of the Supreme Court.

(2) The Public Solicitor shall have and may exercise and discharge the powers, authorities, duties and  
25 functions conferred and imposed upon the Public Solicitor by or under this Act.

4. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint and employ such officers and  
30 employees as may be necessary for the execution of this Act.

(2) For the purposes of this Act the Minister may, with the approval of the Minister of the Department concerned and of the Public Service Board, on such terms  
35 as may be arranged, make use of the services of any of the officers or employees of any Government Department.

5. The Public Solicitor shall keep a list of barristers and solicitors of the Supreme Court who are willing to  
investigate

List of  
barristers  
and  
solicitors.

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investigate and report upon the application of any person to be granted legal assistance under this Act, or to act for any assisted person in any proceedings.

5 **6.** (1) Any person who desires to be granted legal assistance under this Act shall make application in that behalf to the Public Solicitor. Application for assistance.

Every such application shall be in or to the effect of the prescribed form, shall furnish the particulars indicated in the form and shall be verified as prescribed.

10 (2) Where the person who desires to be granted legal assistance under this Act is an infant the application under this section shall be made on behalf of the infant by his next friend.

15 For the purposes of any such application the expression "applicant" wherever appearing in subsection three or in subsection four of this section, shall be construed as including the infant and the next friend or either of them.

20 (3) Where an application is made under this section the Public Solicitor may—

- (a) make such inquiries as he thinks fit as to the means and condition of the applicant and as to the merits of the case;
- 25 (b) require the applicant to furnish such information and such books, documents and writings as the Public Solicitor may require for the purpose of considering the application;
- (c) require the applicant to attend personally;
- 30 (d) refer the application or any matter arising out of the application to any barrister or solicitor to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application;
- 35 (e) take or cause to be taken such steps as may be necessary to conserve the interests of the applicant pending the determination of his application;
- 40 (f) defray expenses incidental to any of the foregoing matters out of any funds in his control which are available for the purpose.

(4)

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(4) The Public Solicitor may grant to the applicant a certificate that the applicant is entitled to legal assistance under this Act where he is satisfied that—

- 5 (a) the applicant has reasonable grounds for taking, defending, continuing or being a party to proceedings in the Supreme Court or in a district court or to such proceedings or class of proceedings in such other court as may be prescribed;
- 10 (b) the applicant is not possessed of or entitled to property of a total value of more than one hundred pounds exclusive of—
- 15 (i) the subject matter of the proceedings;
- (ii) wearing apparel of the applicant;
- (iii) tools of trade of the applicant;
- (iv) household furniture used by the applicant in his home;
- 20 (v) a dwelling house owned and used by the applicant as his home where the value of the interest of the applicant in that dwelling house does not exceed seven hundred and fifty pounds;
- 25 (c) the income of the applicant, together with the income (if any) of the spouse of the applicant, during the period of twelve months preceding the making of the application, after deducting therefrom an amount equal to fifty pounds for each person totally dependent on the applicant or spouse, does not exceed the multiple
- 30 of fifty pounds next above the annual equivalent of the needs basic wage assessed on the index number for Sydney for the quarter current at the date of the application, together with the fixed loading addition applicable to the needs
- 35 basic wage so assessed.

(5) (a) The Public Solicitor may, at any time, and whether or not application has been made for the purpose cancel any certificate issued under this section, and subject to paragraph (b) of this subsection the person

40 to whom the certificate was granted shall, as from the date of such cancellation, cease to be an assisted person.

(b)

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(b) When the certificate so cancelled has been filed in the office of any court the Public Solicitor shall notify the court of such cancellation, and, as from the date of such notification, the person to whom the certificate was granted shall cease to be an assisted person.

7. If, in relation to any proceedings to which a person who has made an application for legal assistance under this Act or an assisted person is a party, any other party makes application for legal assistance under this Act, the provisions of this Act shall apply to both such parties:

Applica-  
tions for  
assistance  
by more  
than one  
party.  
cf. Act No.  
43, 1928  
(W.A.),  
s. 8.

Provided that the Public Solicitor shall not himself act for either such party but shall assign a solicitor to act for each assisted person.

8. (1) Where a certificate is granted pursuant to section six of this Act the Public Solicitor may act for the assisted person or may assign a solicitor so to act, and in such case shall endorse on the certificate the name of the solicitor so assigned.

Endorse-  
ment  
and filing  
of certifi-  
cate.

Where the solicitor so assigned conducts his practice in a country town there may also be assigned a solicitor practising in Sydney to act as agent for such country solicitor in the proceedings.

(2) Before taking any other step in the proceedings the Public Solicitor or the solicitor so assigned shall file the certificate in the office of the court in which the proceedings are pending or are to be taken.

No court fee shall be charged in respect of the filing of the certificate.

(3) Where any certificate is so filed the assisted person—

- (a) shall not be liable for court fees in respect of any proceeding to which the certificate relates; and
- (b) shall be entitled to be supplied free of charge with a copy of any shorthand notes taken and transcribed by the official shorthand writer in any proceeding to which the certificate relates; and

(c)

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(c) shall not, except where express provision is made in this Act, be liable for costs to any other party in any proceeding to which the certificate relates.

5 (4) No person who, pursuant to any reference under this Act, makes any investigation or report or gives any opinion, or conducts any proceedings, shall, except as provided in sections eleven and fourteen of this Act, take or agree to take or seek from an assisted person  
10 any fee, profit or reward (pecuniary or otherwise) in respect thereof.

Nothing in this subsection shall preclude the Public Solicitor or any assigned solicitor from charging out of pocket expenses (not including office expenses).

15 **9.** The Public Solicitor may require any applicant for legal assistance under this Act, or any assisted person to deposit with him such amounts, at such times as the Public Solicitor may think fit, to be used in or towards  
20 meeting out of pocket expenses (not including office expenses) incurred in connection with the application or with any proceeding to which the application or the certificate relates.

Deposit in respect of out of pocket expenses.

Any amounts so deposited shall be used only for the payment of such out of pocket expenses. Any part of  
25 any such amount not so expended shall be refunded.

**10.** (1) The Minister may, upon the application of the Public Solicitor, direct that the payment of fees be waived in respect of all or any of the following matters:—

Waiver of certain fees. cf. Act No. 2322, 1936 (S.A.), s. 3 (2) (3).

30 (a) the provision of a certified or other copy or abstract of any document or record kept by any officer in the employment of the Crown or of any statutory body representing the Crown;  
(b) any search in any register or index kept by any such officer;  
35 (c) production of any such document, record or register.

(2) No such direction shall be given unless the Minister is satisfied that the provision of the certified or other copy or abstract, or the making of the search or  
the

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the production of the document, record or register is required in connection with any legal professional work carried out or to be carried out for an assisted person.

(3) A direction of the Minister given under this section shall be effective to waive payment of the fees referred to in the direction notwithstanding that such fees are imposed by or under the authority of any Act.

**11.** (1) Where it appears to a court or judge that a certificate under section six of this Act has been obtained by fraud or misrepresentation the court or judge may order the assisted person to pay the costs of the solicitor who acted for him or the costs of the other party, or the costs of both such solicitor and such party.

Court may order payment of costs by assisted person in certain events. cf. Ord. 16, R. 31BB (Engl.).

In this subsection a reference to an "assisted person" shall include, in any case where the certificate has been cancelled before the making of the order, the person who, immediately before such cancellation, was the assisted person.

(2) Where it appears to a court or judge that an assisted person has acted improperly in bringing or defending any legal proceedings or in the conduct of them the court or judge may order the assisted person to pay the costs of the solicitor who acted for him or the costs of the other party, or the costs of both such solicitor and such party.

(3) Where an order is made under subsection one or subsection two of this section the costs shall be taxed as if the party ordered to pay them were not an assisted person.

**12.** (1) The like privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the following relationships, that is to say—

Privileges attaching to certain relationships.

(a) the relationship between an applicant for legal assistance under this Act and the Public Solicitor and the solicitor (if any) to whom the application is referred;

(b) the relationship between an assisted person and the Public Solicitor and the solicitor (if any) assigned



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assigned to act for him in any proceedings to which the certificate under section six of this Act relates.

(2) The fact that a plaintiff in any action of tort has made application for legal assistance under this Act, or is an assisted person, shall not be admissible in evidence upon any application for an order under section one hundred and forty of the District Courts Act, 1912-1936, as amended by subsequent Acts.

10 **13.** (1) An assisted person shall not without the leave of the Public Solicitor discharge any barrister or solicitor assigned to act for him.

Assistance not to be discontinued without leave.

(2) Any barrister or solicitor assigned to act for an assisted person shall not discontinue his assistance without the leave of the Public Solicitor:

cf. Poor Persons Rules, 1938; RR. 15, 16.

Provided that any barrister or solicitor may be represented by any other barrister or solicitor.

15 **14.** (1) The court in which are taken proceedings to which an assisted person is a party shall make, in favour of the assisted person, the like order for costs (except against another assisted person) as that court would have made in favour of the assisted person had he not been an assisted person, and in proceedings in which costs follow the event an assisted person shall (except against another assisted person) be entitled to costs in like manner as if he were not an assisted person, notwithstanding that no amount is or will be payable by the assisted person, or that the costs are in excess of the amount which is or will be payable by the assisted person.

Costs. cf. Act No. 2322, 1936 (S.A.), s. 6.

20 (2) Where any moneys are recovered by an assisted person (whether in proceedings or by virtue of a settlement or compromise) he shall be liable to pay to the solicitor who acted for him so much of the moneys so recovered as is recovered in respect of costs.

25 For the purposes of this subsection the moneys recovered in respect of costs shall be deemed to be so much of the total amount so recovered as exceeds the amount (if any) recoverable by the assisted person otherwise than as costs.

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(3) Where any moneys are recovered by an assisted person (whether in proceedings or by virtue of a settlement or compromise) he shall, subject to this subsection, be liable to pay, out of the moneys so recovered, to the solicitor who acted for him, such sum in respect of costs as would have been allowed to that solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner:

cf. Ord. 16,  
R. 31c  
(Engl.).

Provided that—

- 10 (a) where the amount which remains after deducting from the moneys recovered all proper disbursements made by the solicitor (which amount is in this subsection hereinafter referred to as the “net amount recovered”) is less than fifty
- 15 pounds, no sum shall be payable by the assisted person under this subsection;
- (b) where the net amount recovered exceeds fifty pounds the sum payable by the assisted person under this subsection shall not exceed—
- 20 (i) one-fourth of the net amount recovered; or
- (ii) the difference between the net amount recovered and the amount of fifty pounds,
- 25 whichever is the less.

(4) Without prejudice to the generality of subsection one or subsection two or subsection three of this section the expression “costs” shall include—

- 30 (a) barrister’s fees whether or not the same have been paid; and
- (b) fees and charges of the nature referred to in paragraphs (a) and (b) of subsection three of section eight of this Act; and
- 35 (c) fees the payment of which have been waived pursuant to section ten of this Act.

Where the costs recovered include any of the fees or charges referred to in paragraphs (b) and (c) of this subsection the same shall be paid, by the solicitor or other person receiving payment of the costs, in priority to all other items included in the costs.

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**15.** (1) Where litigation has been instituted and any party makes an application for legal assistance under this Act the Public Solicitor shall, as soon as practicable after the application is made, notify the other party or  
**5** each of the other parties, and file in the court in which the litigation is pending a memorandum of such notification.

Stay of proceedings upon making of application for assistance.

cf. Poor Persons Rules, 1938, R. 9.

No fee shall be charged in respect of the filing of the memorandum.

**10** (2) Where any memorandum is so filed, then, unless otherwise ordered by a judge of the court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this section, be stayed for a period of fourteen days:

**15** Provided, however—

(a) that the filing of the memorandum shall not operate to prevent the making of—

**20** (i) an interlocutory order for an injunction or for the appointment of a receiver or manager or a receiver and manager; or

(ii) a stop order; or

**25** (iii) an order to prevent the lapse of a caveat against dealings with land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

**30** (iv) any other order which, in the opinion of a judge of the court in which the litigation is pending, is necessary to prevent an irremediable injustice;

**35** (b) that, unless otherwise ordered by a judge of the court in which the litigation is pending, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in paragraph (a) of this proviso or a decree to the like effect.

(3)

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(3) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of a judge of the court in which the litigation is pending.

5 **16.** (1) Where a certificate granted pursuant to section six of this Act has been filed in any court, and the proceeding to which the certificate relates has been heard in that court, and the assisted person desires to prosecute any appeal or proceeding in the nature of an appeal therefrom, he shall not be entitled to prosecute such appeal or proceeding in the nature of an appeal as an assisted person unless he files in the court in which the appeal or proceeding is to be heard, a certificate from a barrister (not being the barrister who acted for the 10 assisted person in the proceeding) nominated by the Public Solicitor stating that such barrister has thoroughly examined the appellant's case and is of opinion that the appellant has good grounds of appeal, which grounds, together with the reasons therefor, shall be set out in 15 detail in the certificate. 20

Appeals by assisted persons.

(2) If any assisted person prosecutes any such appeal or proceeding in the nature of an appeal without having filed the barrister's certificate referred to in subsection one of this section he shall be deemed not to be 25 an assisted person.

**17.** Rules of court of any court in which proceedings may be taken by any person as an assisted person may be made for carrying out or giving effect to this Act or the regulations.

Rules of court.

30 **18.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which, by this Act, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

35 (2) Without prejudice to the generality of subsection one of this section the regulations may—

- (a) authorise the granting of legal assistance to persons who are of limited means but whose property or income is greater than the property

or

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5 or income respectively referred to in paragraphs (b) and (c) of subsection four of section six of this Act, and prescribe the nature and extent of such assistance and the manner in which and the conditions under and subject to which it may be granted;

(b) regulate all matters relating to fees, charges and costs in or in relation to proceedings to which an assisted person or other person of limited means is a party;

(c) remit or provide for the remission of any fees or charges in any such proceedings.

(3) The regulations may apply generally to all legal matters, whether relating to proceedings in court or otherwise, or may apply to any specified class of matters or proceedings or to all matters or proceedings other than matters or proceedings of a specified class.

(4) Where regulations are made prescribing proceedings or any class of proceedings in any court, other than the Supreme Court or a district court, in respect of which a certificate under section six of this Act may be granted the regulations—

(a) may prescribe the person who, in relation to such proceedings, is to exercise any power which, under section eleven or section fifteen of this Act, is exercisable by a judge or a judge of the court;

(b) may direct that for the purposes of any such proceedings subsection three of section eight of this Act shall be deemed to be amended by omitting from paragraph (b) thereof the words "shorthand notes taken and transcribed by the official shorthand writer" and by inserting in lieu thereof the words "depositions taken."

(5) The regulations may impose a penalty not exceeding fifty pounds for any breach of the regulations.

(6) The regulations shall—

(a) be published in the Gazette;

(b)

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- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- 5 (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

15 **19.** The Poor Persons Legal Remedies Act, 1918, is amended by inserting next after subsection one of section three the following new subsection:—

Amendment of Act No. 36, 1918, s. 3. (Rules of Court.)

20 (1A) No rule of court made before the commencement of the Legal Assistance Act, 1942, under subsection one of this section shall be construed as entitling a solicitor acting for any poor person to receive from such poor person or out of any fund established under the rules of court any sum on account of office expenses or the like or any sum on  
25 account of out of pocket expenses other than actual disbursements by such solicitor.