

LEGAL AID AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Legal Aid Act 1969, and broadly implements certain recommendations of the Legal Aid Board.

Clause 1 relates to the Short Title and commencement of the Bill.

Clause 2 relates to the minimum contribution payable by an assisted person (except where it is waived in cases of hardship). The present minimum contribution is \$15, and this is raised by this clause to \$25. Moreover, the relevant provision is, in effect, transferred to the Schedule to the principal Act, and this, by virtue of *clause 9* of this Bill, will enable the minimum contribution to be altered from time to time by Order in Council.

Clause 3 amends section 18 of the principal Act, relating to contributions from the assisted person and charges over property recovered by him in the proceedings. Broadly, if an assisted person is successful in the proceedings, any property recovered by him is subject to a charge in favour of the Crown for the amount of legal aid paid on that person's behalf. However, the District Committee is empowered to exempt the whole or any part of the property from the charge where it considers it would be just and equitable to do so.

In the case of an overseas applicant, the grant of legal aid must be approved by the Minister, and this clause requires his concurrence also to the exemption from the Crown's charge of any property recovered by the overseas applicant in the proceedings.

Clause 4 gives District Committees wider powers where the recovered property that is subject to a charge in favour of the Crown is land. At present, the Crown is entitled to register the charge under the Statutory Land Charges Registration Act 1928. This new provision does not affect the right to register such a charge, and that procedure can continue to be followed where early settlement is expected.

However, in some cases it may not be reasonable to expect repayment for some years: for example, where the recovered property is the family home and the assisted person has little or no income. To meet such cases, this clause empowers the District Committee to enter into a legal aid charging agreement, providing for repayment of the charge over a period of years. Power is taken to spell out the fine details of the scheme in regulations.

Clause 5 waives the requirement for a Social Security Commission report on the income of an applicant for legal aid in respect of any proceedings where the applicant's sole source of income is a means-tested benefit.

Clause 6 relates to applications for legal aid by persons residing overseas. At present, every grant of legal aid to such a person requires the consent of the Minister. Once he has approved the amount, his decision is final. However, it sometimes happens that extra unforeseen costs are incurred, and this clause gives the Minister a discretion to increase the grant of legal aid to cover such costs.

Clause 7 rewrites section 32 of the principal Act. The object is not to make any substantive changes, but to make clearer the procedure whereby the amount payable to the solicitor and counsel concerned is determined.

Clause 8 relates to the power to make regulations for what is usually known as limited legal aid. At present, the scheme is limited to \$100 of legal aid, but this clause raises that figure to \$200. At the same time, the opportunity is taken to make it clear that this figure is a gross amount, and it does not include disbursements.

Clause 9 gives power to alter the Schedule to the principal Act by Order in Council. At present, the Schedule relates only to the assessment of an applicant's disposable income, and the power to amend the Schedule by Order in Council is set out in section 19 (1A) of the principal Act. *Clause 2* of this Bill widens the scope of the Schedule (as to which, see the note to that clause above), and this clause correspondingly widens the power to amend the Schedule.



Hon. Mr McLay

LEGAL AID AMENDMENT

ANALYSIS

Title	5. Assessment of disposable income and capital and of maximum contributions
1. Short Title and commencement	6. Increased legal aid in case of overseas applicant
2. Financial conditions of legal aid	7. Remuneration of persons giving legal aid
3. Exempting property from charge in favour of Crown	8. Regulations
4. Legal aid charging agreements	9. Power to amend Schedule by Order in Council

A BILL INTITULED

An Act to amend the Legal Aid Act 1969

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Legal Aid Amendment Act 1980, and shall be read together with and deemed part of the Legal Aid Act 1969* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.
2. **Financial conditions of legal aid**—(1) Section 17 (2) of the principal Act is hereby amended by omitting from paragraph (c) (as substituted by section 5 of the Legal Aid
- 15 Amendment Act 1974) the expression "\$15", and substituting the words "the amount specified in the Schedule to this Act".

*Reprinted 1975, Vol. 3, p. 2111
Amendment 1976, No. 99

(2) The Schedule to the principal Act (as added by section 8 (5) of the Legal Aid Amendment Act 1974) is hereby amended by inserting, before the heading "AMOUNTS TO BE DEDUCTED IN DETERMINING DISPOSABLE INCOME", the following heading and item:

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**"AMOUNT OF MINIMUM CONTRIBUTION PAYABLE BY A
RECIPIENT OF LEGAL AID**

"The amount payable under paragraph (c) of section 17 (2) of this Act by a recipient of legal aid by way of contribution in respect of sums payable by the Crown under this Act on his behalf shall, subject to the provisions of that paragraph, be \$25."

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3. Exempting property from charge in favour of Crown—Section 18 of the principal Act is hereby amended by adding to subsection (4A) (as substituted by section 4 (2) of the Legal Aid Amendment Act 1971) the following proviso:

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"Provided that, in any case where legal aid was granted to an applicant who was not resident in New Zealand at the time when the application for legal aid was made, the District Committee shall not make an order under this subsection without the concurrence of the Minister."

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4. Legal aid charging agreements—The principal Act is hereby amended by renumbering section 18A (as inserted by section 7 of the Legal Aid Amendment Act 1974) as section 18B, and inserting, before that section, the following section:

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"18A. (1) Notwithstanding anything in subsection (4) of section 18 of this Act, where any land is subject to a charge for the benefit of the Crown under that subsection, the District Committee may, if it considers that it would be unjust or unreasonable to require immediate payment of the amount charged, enter into an agreement (in this section referred to as a legal aid charging agreement) providing for the repayment by the assisted person of the amount charged over such term, by such instalments, and on such terms and conditions (whether as to the payment of interest or otherwise), as the District Committee may determine in accordance with regulations made under this Act.

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"(2) Without limiting section 38 of this Act, regulations may be made under that section for all or any of the following purposes:

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- “(a) Prescribing the maximum term for which a legal aid charging agreement may be entered into, and providing for the renewal of any such agreement for a further term or terms:
- 5 “(b) Prescribing the maximum rate of interest that may be charged in respect of any amount remaining unpaid under a legal aid charging agreement:
- “(c) Providing for the registration of legal aid charging agreements under the Land Transfer Act 1952, and prescribing the priority of any such agreement when so registered in relation to any other estates, interests, mortgages, charges, or other encumbrances registered in respect of the same land:
- 10 “(d) Providing for the registration of a charge in accordance with the provisions of the Statutory Land Charges Registration Act 1928 to secure the repayment of any amount in respect of which there is default under any legal aid charging agreement:
- 15 “(e) Prescribing the manner in which legal aid charging agreements are to be signed and executed by or on behalf of District Committees:
- “(f) Providing for the continuance of the benefit of a legal aid charging agreement, in such manner as may be prescribed in the regulations, where the land subject to the agreement is sold and the proceeds applied towards the purchase of other land:
- 20 “(g) Providing for the payment by assisted persons of fees and expenses in respect of legal aid charging agreements.”

30 **5. Assessment of disposable income and capital and of maximum contributions**—Section 19 of the principal Act is hereby amended by inserting, after subsection (9), the following subsection:

35 “(9A) No assessment or report by the Social Security Commission shall be required under subsection (9) of this section where the sole source of the applicant’s income is a benefit within the meaning of the Social Security Act 1964, the payment and assessment of which is subject to a means test under that Act.”

6. Increased legal aid in case of overseas applicant—Section 25 of the principal Act (as amended by section 7 of the Legal Aid Amendment Act 1971) is hereby amended by adding the following subsection:

“(4) Notwithstanding anything in subsection (3) of this section, where legal aid has been granted to an applicant who was not resident in New Zealand at the time when the application was made, the Minister may, on the application of the assisted person or his solicitor and on the recommendation of the District Committee referred to in subsection (2) of this section, increase the amount of legal aid granted to the assisted person to meet or assist in meeting any costs incurred after the date of the original application for legal aid if the Minister is satisfied—

“(a) That those increased costs could not reasonably have been foreseen at the date of the original application; and

“(b) That those increased costs have been incurred reasonably; and

“(c) That those increased costs could not be the subject of a fresh application for legal aid under this Act.”

7. Remuneration of persons giving legal aid—(1) The principal Act is hereby amended by repealing section 32, and substituting the following section:

“32. (1) Subject to the succeeding provisions of this section, the sums allowed by the District Committee to counsel and a solicitor in connection with any proceedings in respect of which legal aid is granted under this Act shall be—

“(a) The full amount of the costs on account of disbursements:

“(b) Eighty-five percent of the amount of profit costs and counsel’s fee.

“(2) The District Committee may disallow the whole or any part of any account submitted to it for the purposes of subsection (1) of this section.

“(3) The Registrar of the High Court who is a member of the District Committee to which the application was made, or the solicitor who acted in the proceedings, may require the amounts allowed under subsection (1) of this section to be taxed by a Registrar or a designated Deputy Registrar of the High Court, in which case the amounts allowed under paragraphs (a) and (b) of subsection (1) of this section shall be—

“(a) The amounts allowed by the Registrar or Deputy Registrar on taxation; or

“(b) Where the Registrar’s decision is reviewed by the High Court, the amounts allowed by the Court on review.

“(4) Where the person granted legal aid is not resident in New Zealand, no sum shall be allowed on account of disbursement in respect of the travelling expenses of the parties or of any witness to or from New Zealand unless, before those expenses are incurred, the Minister of Justice approves the payment of those expenses, or such part of them as he may determine, as part of the costs to be allowed under subsection (1) of this section.

“(5) The Minister of Justice shall not give any such approval unless the circumstances are exceptional, and may have regard to the amount of the expenses in relation to the interest (financial or otherwise) of the applicant in the proceedings.

“(6) Subject to section 22 (2) of this Act, all sums so allowed shall be paid by the Crown.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 10 of the Legal Aid Amendment Act 1971:

(b) Section 10 of the Legal Aid Amendment Act 1974.

8. Regulations—(1) Section 38 of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Providing a scheme for the grant of legal aid up to a gross amount of \$200, excluding disbursements, and prescribing the procedure in relation thereto.”.

(2) Section 11 of the Legal Aid Amendment Act 1971 is hereby consequentially repealed.

9. Power to amend Schedule by Order in Council—

(1) The principal Act is hereby amended by inserting, after section 38, the following section:

“38A. The Governor-General may from time to time, by Order in Council, amend the Schedule to this Act by—

“(a) Omitting therefrom any amount, whether included therein by this Act or any other Act or by Order in Council, and substituting any other amount:

“(b) Omitting therefrom any item or words relating to an amount or amounts that may be deducted in determining a person’s disposable income, whether included therein by this Act or any other Act or by Order in Council: **5**

“(c) Including therein any item or items relating to an amount or amounts that may be deducted in determining a person’s disposable income, or any words required for the purpose of explaining any item included or being included in that Schedule.” **10**

(2) Section 19 of the principal Act is hereby consequentially amended by repealing subsection (1A) (as inserted by section 8 (2) of the Legal Aid Amendment Act 1974).