

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 30 September 1980.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 13 November 1980.

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a triple rule, or with triple rule before first line and after last line.

Hon. Mr McLay

LEGAL AID AMENDMENT

ANALYSIS

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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

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

Amendment Act 1974) the expression "\$15", and substituting the words ("*amount specified in the Schedule to this Act*") "the prescribed amount".

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(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: 5

"AMOUNT OF MINIMUM CONTRIBUTION PAYABLE BY A RECIPIENT OF LEGAL AID 10

"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." 15

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: 20

"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." 25

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: 30

"18A. (1) Notwithstanding anything in subsection (4) of section 18 of this Act, where any (*land*) property 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*) aided 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. 35 40

“(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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5 “(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:

10 “(b) Prescribing the maximum rate of interest that may be charged in respect of any amount remaining unpaid under a legal aid charging agreement, and prohibiting the compounding of any interest payable under any such agreement:

Struck Out

15 “(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:

20 “(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:

New

30 “(c) Providing for the registration of legal aid charging agreements under the Land Transfer Act 1952 or the Chattels Transfer Act 1924, where appropriate:

35 “(d) Providing for the sale of the property charged in the event of default under any legal aid charging agreement, the procedure to be followed in any such sale, and the manner in which the proceeds of sale are to be applied:

“(da) Requiring District Committees to review every legal aid charging agreement at specified intervals:

40 “(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)** property subject to the agreement is sold and the proceeds applied towards the purchase of other **(land)** property: 5

“(g) Providing for the payment by assisted persons of fees and expenses in respect of legal aid charging agreements, and providing in appropriate cases for the addition of those fees and expenses to, and their recovery as part of, the amounts secured by such agreements.” 10

Struck Out

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: 15

“(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.” 20

New

5. Assessment of disposable income and capital and of maximum contributions—(1) Section 19 (1) of the principal Act (as amended by section 8 (1) (b) of the Legal Aid Amendment Act 1974) is hereby amended by omitting the words “such amounts specified in the Schedule to this Act as are appropriate”, and substituting the words “the prescribed amounts in respect of the various items specified in the Schedule to this Act, so far as they are applicable to the case”. 25 30

(2) Section 19 (1A) of the principal Act (as inserted by section 8 (2) of the Legal Aid Amendment Act 1974) is hereby repealed. 35

(3) Section 19 of the principal Act is hereby further amended by inserting, after subsection (9), the following subsection:

New

“(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
5 within the meaning of Part I of the Social Security Act 1964, the payment and assessment of which is subject to an income test under that Part.”

(4) Subsections (1) (b) and (2) of section 8 of the Legal Aid Amendment Act 1974 are hereby consequentially
10 repealed.

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:

15 “(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))** aided person or his solicitor and on the

20 recommendation of the District Committee referred to in subsection (2) of this section, increase the amount of legal aid granted to the **((assisted))** aided 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—

25 “(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

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

New

6A. Appeals against decisions of District Committee—
35 Section 27 of the principal Act (as amended by section 8 of the Legal Aid Amendment Act 1971) is hereby amended by inserting, after the words “of that section”, the words “or to require or refuse to allow the person to enter into a legal aid charging agreement or to require any term or condition to be included in or excluded from any such agreement”.

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— 5

“(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. 10

“(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— 15 20

“(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. 25

“(4) Where the person granted legal aid is not resident in New Zealand, no sum shall be allowed on account of disbursements 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. 30 35

“(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. 40

“(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: 45

(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*) paragraphs:

5 “(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:

New

10 “(ca) Prescribing amounts that are required to be prescribed for the purposes of sections 17 (2) (c) and 19 of this Act:”.

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

15 *New*

(2) Section 38 of the principal Act is hereby further amended by omitting from paragraph (e) (as amended by section 11 of the Legal Aid Amendment Act 1974) the expression “of \$15”.

20 (3) The following enactments are hereby consequentially repealed:

- (a) Section 11 of the Legal Aid Amendment Act 1971;
- (b) Section 11 of the Legal Aid Amendment Act 1974.

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25 **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—

30 “(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:

35 “(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:

“(c) Including therein any item or items relating to an amount or amounts that may be deducted in deter-

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mining a person's disposable income, or any words required for the purpose of explaining any item included or being included in that Schedule."

(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). 5

New

9. New Schedule substituted—(1) The principal Act is hereby amended by repealing the Schedule (as added by section 8 (5) of the Legal Aid Amendment Act 1974), and substituting the Schedule set out in the Schedule to this Act. 10

(2) Section 8 (5) of the Legal Aid Amendment Act 1974 is hereby consequentially repealed.

*New***SCHEDULE**Section 9**NEW SCHEDULE SUBSTITUTED IN PRINCIPAL ACT**Section 19 (1)**"SCHEDULE**

**ITEMS IN RESPECT OF WHICH DEDUCTIONS MAY BE MADE IN
DETERMINING DISPOSABLE INCOME**

1. A personal allowance.
2. An allowance where the resources of any other person are treated as the applicant's resources under any of the provisions of subsections (6), (7), and (8) of section 19 of this Act.
3. An allowance—
 - (a) In the case of a married person, for a dependent child or a dependent relative (not being the person's spouse); or
 - (b) In the case of an unmarried person, for a dependent child or a dependent relative.
4. The amount of income tax on the applicant's total income.

For the purposes of this Schedule, an unmarried person means a person who has never been married, or whose marriage has been dissolved by divorce and who has not remarried, or who is living apart from his or her spouse, or whose spouse has died and who has not remarried."