

[AS REPORTED FROM THE JUSTICE AND LAW REFORM  
COMMITTEE]

*House of Representatives, 18 October 1994.*

**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 single rule, or with single rule before first line and after last line.**

*Hon. D. A. M. Graham*

**LEGAL SERVICES AMENDMENT**

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A BILL INTITULED

**An Act to amend the Legal Services Act 1991**

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Legal Services Amendment Act 1994, and shall be

No. 29—2

read together with and deemed part of the Legal Services Act 1991\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of (October 1994) February 1995.

**2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions: 5

*New*

“‘Cautioned person’ means any person (other than a detained person) who— 10  
 “(a) Is being questioned by any authority, or whom any authority wishes to question, in relation to the commission or possible commission of an offence by that person; and  
 “(b) Before or in the course of that questioning, is cautioned by the authority and informed that the person may consult a practitioner: 15

“‘Detained person’ means any person who—  
 “(a) Either— 20  
 “(i) Has been arrested and is being detained by any authority; or  
 “(ii) Is being detained under any enactment by any authority; and  
 “(b) Is entitled, under section 23 (1) (b) of the New Zealand Bill of Rights Act 1990, to consult and instruct a practitioner without delay: 25  
 “‘Detention legal assistance scheme’ means any legal assistance scheme established and administered by the Board pursuant to section 158D of this Act:  
 “‘Legal assistance practitioner’, in relation to a legal assistance scheme, means a practitioner whose name is for the time being on a list compiled, in respect of that scheme, pursuant to section 158F (1) of this Act: 30  
 “‘Legal assistance scheme’ means—  
 “(a) The Police detention legal assistance scheme; 35  
 and  
 “(b) Any other detention legal assistance scheme for the time being established and administered by the Board:

\*1991, No. 71

Amendment: 1992, No. 84

“ ‘Police detention legal assistance scheme’ means the Police detention legal assistance scheme administered by the Board pursuant to **section 158c** of this Act:

*New*

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“ ‘Specified person’ means—  
 “(a) A detained person:  
 “(b) A cautioned person:”.

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**3. Assignment of practitioner**—(1) Section 17 (2) of the principal Act is hereby amended by omitting the expression “subsection (3)”, and substituting the expression “subsections (2A) and (3)”.

(2) Section 17 of the principal Act is hereby amended by inserting, after subsection (2), the following subsections:

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“(2A) Where—

“(a) A Registrar has directed that criminal legal aid be granted to any person in any proceedings; and

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“(b) A legal assistance practitioner has provided advice or assistance, or both, to that person in respect of the most recent investigation leading to those proceedings, and the Registrar required to assign a practitioner to act for that person is aware of that fact; and

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“(c) That practitioner is eligible to be assigned to that person in accordance with subsection (2) of this section,—  
 the Registrar may, subject to any instructions issued by the Board pursuant to **section 158i** of this Act, with the agreement of that practitioner, assign that practitioner to act for that person in those proceedings.

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“(2B) Where paragraphs (a) to (c) of subsection (2A) of this section apply with respect to any person to whom criminal legal aid has been granted, but the practitioner concerned is not willing or not reasonably available to act for that person, the Registrar shall, subject to subsection (3) of this section, assign some other practitioner from the list to act for that person.”

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**4. Regulations**—(1) Section 93 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

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“(ca) Regulating the setting, by the Board, of hourly rates of remuneration and fixed fees pursuant to subparagraphs (i) and (ii) of **section 158i (1) (b)** of this Act, including provision for determining the formula or

formulas to be used by the Board in setting such rates and fees.”.

(2) Section 93 (e) of the principal Act is hereby amended by inserting, after the expression “section 158”, the expression “or section 158i”.

(3) Section 93 of the principal Act is hereby amended by inserting, after paragraph (j), the following paragraph:

“(ja) Providing for the administration of legal assistance schemes, and for the payment of remuneration to legal assistance practitioners under such schemes:”.

**5. Functions**—(1) Section 95 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) To administer the criminal legal aid scheme, the civil legal aid scheme, the duty solicitor scheme, and the Police detention legal assistance scheme:”.

(2) Section 95 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) In accordance with section 158b of this Act, to establish detention legal assistance schemes, and to administer such schemes:”.

**6. Bank accounts**—Section 106 (4) of the principal Act is hereby repealed.

**7. Annual report**—Section 111 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(ab) The total amount paid by the Board during that year in respect of each of the following:

“(i) The duty solicitor scheme:

“(ii) The Police detention legal assistance scheme:

“(iii) Any other legal assistance schemes; and”.

**8. Legal services districts**—Section 113 of the principal Act is hereby amended by omitting the words “Minister may from time to time, in”, and substituting the words “Board may from time to time, with the approval of the Minister and after”.

**9. Functions of Committees**—(1) Section 115 of the principal Act is hereby amended by inserting, after paragraph (d), the following paragraph:

“(da) To administer the Police detention legal assistance scheme, and any other legal assistance scheme, within its district:”.

5 (2) Section 115 of the principal Act is hereby amended by inserting, after subparagraph (iii) of paragraph (e), the following subparagraph:

“(iia) To fund the Police detention legal assistance scheme, and any other legal assistance scheme, within the district of the Committee:”.

10 **10. Heading to Part V**—The principal Act is hereby amended by omitting the heading to Part V, and substituting the heading “COMMUNITY LAW CENTRES, DUTY SOLICITOR SCHEME, AND LEGAL ASSISTANCE SCHEMES”.

15 **11. Duty solicitors not to take unauthorised payments**—The principal Act is hereby amended by inserting, after section 157, the following section:

20 “157A. Where, in accordance with the duty solicitor scheme, a duty solicitor provides assistance to an unrepresented defendant, that duty solicitor shall not, without the prior approval of a District Committee, take any payment or other benefit in respect of the provision of that assistance except such remuneration as is authorised by regulations made under this Act or by instructions issued under section 158 of this Act.”

25 **12. New heading and sections inserted**—The principal Act is hereby amended by inserting in Part V, after section 158B (as inserted by section 5 of the Legal Services Amendment Act 1992), the following heading and sections:

*“Legal Assistance Schemes*

30 “158c. **Police detention legal assistance scheme**—(1) It shall be a function of the Board to administer, in consultation with the Minister and the New Zealand Law Society, a Police detention legal assistance scheme throughout New Zealand.

35 “(2) The object of the Police detention legal assistance scheme shall be to ensure that there is available, in each district, a sufficient number of legal assistance practitioners to provide, in accordance with this Act, advice or assistance, or both, to unrepresented persons who—

*Struck Out*

- “(a) Either—
- “(i) Have been arrested by the Police and are being detained; or
  - “(ii) Are being detained by the Police under any enactment; and
- “(b) Wish to consult and instruct a practitioner about the arrest or, as the case may be, the detention.

*New*

- “(a) Either—
- “(i) Are detained persons who are being detained by the Police; or
  - “(ii) Are cautioned persons who are being questioned by the Police or whom the Police wish to question; and
- “(b) Wish to consult and, where appropriate, instruct a practitioner about any matter relating to their arrest or, as the case may be, their detention or that questioning.

“158D. **Other detention legal assistance schemes—**

*Struck Out*

(1) The Board may from time to time, with the prior approval of the Minister in each case, establish such detention legal assistance schemes as the Board considers necessary to enable detained persons to exercise their right under section 23 (1) (b) of the New Zealand Bill of Rights Act 1990 to consult and instruct a practitioner without delay.

*New*

(1) The Board may from time to time, with the prior approval of the Minister in each case, establish such detention legal assistance schemes as the Board considers necessary—

“(a) To enable unrepresented detained persons (other than persons detained by the Police) to exercise their

*New*

5           “(b) To enable unrepresented cautioned persons (other than persons who are being questioned by the Police or whom the Police wish to question) to consult a practitioner about any matter relating to their questioning.

10          “(2) A detention legal assistance scheme established pursuant to **subsection (1)** of this section—

*Struck Out*

15           “(a) Shall apply in respect of detained persons who are detained by such authority (other than the Police) as the Board determines; and

*New*

20           “(a) Shall apply in respect of—  
                   “(i) Detained persons who are being detained by such authority (other than the Police) as the Board determines; and  
                   “(ii) Cautioned persons who are being questioned by that authority or whom that authority wishes to question; and

25           “(b) May be made to apply throughout New Zealand, or only in respect of those areas of New Zealand where the Board considers there is likely to be a demand for the services provided pursuant to the scheme.

30           “(3) It shall be a function of the Board to administer, in consultation with the Minister and the New Zealand Law Society, such detention legal assistance schemes as are established pursuant to **subsection (1)** of this section.

35           “(4) The object of each detention legal assistance scheme established pursuant to **subsection (1)** of this section shall be to ensure that there is available, in each district in which the scheme operates, a sufficient number of legal assistance practitioners to provide, in accordance with this Act, advice or

assistance, or both, to unrepresented persons (being *(detained)* specified persons in respect of whom the scheme applies) who wish to consult and (*instruct a practitioner about their arrest or, as the case may be, their detention*), where appropriate, instruct a practitioner about any matter relating to their arrest or, as the case may be, their detention or their questioning. 5

**“158E. Nature of assistance to be provided under legal assistance scheme—**(1) Subject to **section 158H (2)** of this Act, any *(detained)* specified person in respect of whom a legal assistance scheme applies shall be entitled, in accordance with the terms of the scheme, to the services of one legal assistance practitioner during the period for which the *(detained)* specified person is being detained or, as the case may be, questioned. 10

**“(2)** Without limiting the generality of **subsection (1)** of this section and of **sections 158c (2) and 158D (4)** of this Act, the duties of legal assistance practitioners acting pursuant to a legal assistance scheme shall include— 15

*Struck Out*

“(a) Advising detained persons in respect of whom the scheme applies in relation to— 20

    “(i) The rights and obligations of those detained persons, as they relate to their arrest or, as the case may be, their detention:

    “(ii) The requirements of the enactment under which they are detained (if any), and of any other relevant enactment or rule of law: 25

“(b) Providing such other legal assistance as those detained persons may reasonably require, including (without limitation) attending at the place where those persons are being detained or questioned: 30

*New*

“(a) Advising specified persons in respect of whom the scheme applies in relation to,—

    “(i) In the case of detained persons, the rights and obligations of such persons, as they relate to their arrest or, as the case may be, their detention: 35

    “(ii) In the case of detained persons, the requirements of the enactment under which they



New

are detained (if any), and of any other relevant enactment or rule of law:

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“(iii) In the case of cautioned persons, the rights and obligations of such persons, as they relate to the questioning that is being carried out or is proposed:

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“(b) Providing such other legal assistance as those specified persons may reasonably require in the particular circumstances of the case, including (without limitation) attending at the place where those persons are being detained or questioned:

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“(c) Carrying out such other duties as are imposed on those legal assistance practitioners by any instructions issued by the Board pursuant to **section 158** of this Act.

“**158F. Lists of legal assistance practitioners**—(1) For each legal assistance scheme operating within the district of a District Law Society, the Secretary of that District Law Society shall from time to time forward, to—

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“(a) The District Legal Services Committee whose district comprises or includes the district of that District Law Society; or

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“(b) In any case where 2 or more legal services districts comprise or include part of the district of that District Law Society, the District Legal Services Committee for each of those legal services districts,—

a list containing the name, address, and contact telephone number of every practitioner who—

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“(c) In the opinion of the Society, is a fit and proper person to act as a legal assistance practitioner in respect of that legal assistance scheme; and

“(d) Is willing to act as such a legal assistance practitioner.

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“(2) Every such list shall be in a form approved by the Board.

“(3) Any list forwarded in accordance with **subsection (1)** of this section may be in the form of 2 or more separate lists, each relating to a different part of the District Law Society’s district, as long as those lists, taken as a whole, cover the entire district of that Society.

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“(4) Every District Law Society shall take all reasonable steps to ensure that the information contained in every list provided

by that Society pursuant to **subsection (1)** of this section is at all times accurate and up to date, and for that purpose shall, as soon as practicable after becoming aware of any changes required to be made to the list, inform the relevant Committee of those changes. 5

“(5) At intervals not exceeding 2 years, every District Law Society shall review, in accordance with regulations made under this Act, each list provided by that Society pursuant to **subsection (1)** of this section that is for the time being in force, for the purpose of determining, in relation to each practitioner whose name appears on that list, whether or not that practitioner’s name should be retained on that list. 10

“**158G. Lists to be made available to appropriate authorities**—(1) Every District Legal Services Committee shall, as soon as practicable, make available, to— 15

“(a) The district commander of the Police district whose district comprises or includes the legal services district of that Committee; or

“(b) In any case where 2 or more Police districts comprise or include part of the legal services district of that Committee, the district commander of each of those Police districts,— 20

a copy of every list, or a copy of the relevant part of every list, forwarded to that Committee pursuant to **section 158F (1)** of this Act that relates to the Police detention legal assistance scheme. 25

“(2) Where any detention legal assistance scheme applicable in respect of (*persons who are detained by*) any authority is operating within the district of a District Legal Services Committee, that Committee shall, as soon as practicable, make available, to such representatives of that authority within that district as are from time to time agreed between the Committee and that authority, a copy of every list, or a copy of the relevant part of every list, forwarded to that Committee pursuant to **section 158F (1)** of this Act that relates to that detention legal assistance scheme. 30 35

“**158H. Manner in which assistance provided**—(1) Subject to **section 158E** of this Act and to any instructions issued by the Board pursuant to **section 158I** of this Act, where a legal assistance practitioner is requested to provide advice or assistance, or both, to a (*detained*) specified person in respect of whom a legal assistance scheme applies, the practitioner may provide that advice or assistance in such manner as that practitioner considers appropriate in the circumstances, whether— 40

“(a) By telephone; or

“(b) By personal attendance at the place where the *(detained)* specified person is being questioned or detained,—

or both.

5 “(2) Where—

“(a) A legal assistance practitioner is requested, in accordance with the terms of a legal assistance scheme, to provide advice or assistance to a *(detained)* specified person in respect of whom that legal assistance scheme applies; and

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“(b) That practitioner—

“(i) Is for any reason unable or unwilling to provide advice or assistance to that *(detained)* specified person pursuant to that legal assistance scheme; or

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“(ii) Having agreed to provide advice or assistance to that *(detained)* specified person pursuant to the scheme, is subsequently for any reason unable or unwilling to continue to provide such advice or assistance,—

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that practitioner shall, where practicable, refer that *(detained)* specified person to a legal assistance practitioner who may be willing and able to provide such advice or assistance.

25 “158I. **Board may issue instructions on operation of legal assistance schemes**—(1) Subject to any regulations made under this Act, for the purpose of carrying out its functions under **sections 158c and 158d** of this Act the Board—

“(a) May from time to time, after consultation with the New Zealand Law Society, issue instructions—

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“(i) Providing for notification to Registrars that an applicant for criminal legal aid has been provided with advice or assistance, or both, by a legal assistance practitioner pursuant to a legal assistance scheme:

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“(ii) Relating to such other matters as are reasonably necessary to ensure the effective and efficient administration of a legal assistance scheme:

“(b) Shall from time to time issue instructions—

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“(i) Setting out fixed fees for legal assistance practitioners in respect of the provision, by telephone, of advice or assistance, or both:

“(ii) Setting out fixed fees or hourly rates of remuneration for legal assistance practitioners in

respect of the provision, by personal attendance, of advice or assistance, or both:

“(iii) Relating to the recording of instances where advice or assistance, or both, are provided by a legal assistance practitioner: 5

“(iv) Relating to the making of claims for remuneration by legal assistance practitioners:

“(v) Containing such guidelines as are required, by regulations made under this Act, to be included in instructions issued by the Board under this section. 10

“(2) Subject to any regulations made under this Act, where, under subparagraph (i) or subparagraph (ii) of subsection (1) (b) of this section, the Board is required to set fixed fees or hourly rates of remuneration for legal assistance practitioners, the Board may— 15

“(a) Set fixed fees or hourly rates of remuneration that vary according to the experience of the practitioners concerned:

“(b) Set different fixed fees or hourly rates of remuneration for different legal services districts: 20

“(c) Set fixed fees or hourly rates of remuneration that vary according to the time of day at which advice or assistance, or both, are provided:

“(d) Set different fixed fees or hourly rates of remuneration for different legal assistance schemes. 25

“(3) Without limiting subsection (2) of this section, instructions issued under this section may relate to 1 or more legal assistance schemes; and such instructions may make different provision for different legal assistance schemes.

“158j. **Further provisions relating to instructions—** 30  
(1) Every person or body to which any instruction issued under section 158i of this Act is applicable shall observe every such instruction until it is revoked by the Board.

“(2) Nothing in section 158i authorises the Board to issue any instruction that overrides or limits, or has the effect of 35  
overriding or limiting, the obligations of a legal assistance practitioner to provide proper representation, advice, or assistance to his or her client.

“158k. **Legal assistance practitioners not to take unauthorised payments—** 40  
Where, in accordance with a legal assistance scheme, a legal assistance practitioner provides advice or assistance, or both, to a (*detained*) specified person in respect of whom that legal assistance scheme applies, that legal assistance practitioner shall not, without the prior approval of a

District Committee, take any payment or other benefit in respect of the provision of that advice or assistance except such remuneration as is authorised by regulations made under this Act or by instructions issued under **section 158** of this Act.

5       “**158L. Instructions deemed to be regulations**—All instructions issued under **section 158** of this Act shall be deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the Acts and Regulations Publication Act 1989.

10       “**158M. Notification, availability, and commencement of instructions**—(1) Where any instructions are issued under **section 158** of this Act,—

15               “(a) The Board shall, as soon as practicable after the instructions are issued, arrange for the publication in the *Gazette* of a notice—

                  “(i) Indicating that the instructions have been issued; and

20                       “(ii) Showing a place at which copies of the instructions are available for inspection free of charge and for purchase; and

                  “(b) The Board shall make copies of the instructions available—

25                       “(i) For inspection by members of the public free of charge; and

                  “(ii) For purchase by members of the public at a reasonable price.

                  “(2) On the revocation of any instructions issued under **section 158** of this Act, **subsection (1) (b)** of this section shall cease to apply in relation to those instructions.

30                       “(3) Subject to **subsection (4)** of this section, every instruction issued under **section 158** of this Act shall come into force on the 28th day after the date of its notification in the *Gazette* or on such later day as may be specified in the instruction.

35                       “(4) Where, in the opinion of the Board, it is necessary, for any reason of a financial nature, that any instruction issued pursuant to **section 158 (1) (b)** of this Act come into force earlier than the 28th day after the date of its notification in the *Gazette*, that instruction may come into force on an earlier date, but in no case earlier than the 14th day after the date of its  
40 notification in the *Gazette*.”