

1972/127



THE LEGAL AID REGULATIONS 1970, AMENDMENT NO. 1

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 19th day of June 1972

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Legal Aid Act 1969, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. Title—These regulations may be cited as the Legal Aid Regulations 1970, Amendment No. 1, and shall be read together with and deemed part of the Legal Aid Regulations 1970* (hereinafter referred to as the principal regulations).

2. Applicants not required to pay initial contribution—Regulation 11 of the principal regulations is hereby amended by inserting in paragraph (a), after the words “(excluding any gratuity)”, the words “a war service pension (excluding any gratuity)”.

3. Decision of the Committee—Regulation 13 of the principal regulations is hereby amended by inserting in subclause (1), after the word “shall” where it first appears, the words “unless the application is one that has been referred to it by the Secretary for Justice under subclause (2) of regulation 5 hereof.”.

4. Procedure where applicant a non-resident—The principal regulations are hereby amended by inserting, after regulation 13, the following regulation:

“13A. (1) Where the application for legal aid has been made by or on behalf of a person who was not resident in New Zealand at the time when the application was made, the Committee to which the application has been referred by the Secretary for Justice shall consider it and as soon as possible advise the Minister in writing of its opinion on the matters specified in subsection (2) of section 25 of the Act (as added by section 7 of the Legal Aid Amendment Act 1971).

“(2) When sending its opinion to the Minister as aforesaid the Committee shall also forward to him all papers held by it relating to the application.”

5. Limited aid for small claims—Regulation 18 of the principal regulations is hereby amended by omitting the expression “\$50” in each place where it appears, and substituting in each case the expression “\$100”.

6. Notification that party legally aided—Regulation 23 of the principal regulations is hereby amended by inserting, after subclause (1), the following subclause:

“(1A) Where any proceedings to which an assisted person is a party are brought to an end, whether by order of the Court or by any agreement entered into between the parties, the assisted person’s solicitor shall forthwith give written notice of that fact to the secretary of the committee which granted legal aid, together with the terms of the order or agreement.”

7. Enforcement of, and applications for exemption from, Crown’s charge—The principal regulations are hereby amended by revoking regulation 24, and substituting the following regulation:

“24. (1) All applications made under subsection (4A) of section 18 of the Act (as inserted by section 4 of the Legal Aid Amendment Act 1971) for an order exempting the whole or any part of the property recovered by or preserved for the assisted person in the proceedings in respect of which legal aid has been granted from the whole or any part of the charge created by subsection (4) of the said section 18 shall be in form 11.

“(2) Subject to the terms of any order made under the said subsection (4A) of section 18, the Crown may enforce any charge created by the said subsection (4) of that section in any manner which would be available if the charge had been given between parties.

“(3) All conveyances and acts done with the intention or having the effect of defeating such a charge shall be void as against the Crown, except in the case of a conveyance to a purchaser in good faith for value who at the time of the conveyance had no notice of the charge.”

8. Payments due to Crown on settlement—Regulation 25 of the principal regulations is hereby amended by revoking subclauses (1) and (2), and substituting the following subclauses:

“(1) Where any sum (whether in respect of damages or costs) is recovered by an assisted person by reason either of a Court order made in the proceedings for which legal aid was granted or of a compromise arrived at to avoid or end those proceedings, it shall be paid to his solicitor, or, if he has no solicitor, to the secretary to the committee which granted him legal aid. No person other than the assisted person’s solicitor or the secretary, as the case may be, shall be competent to give a valid receipt for the sum.

“(2) Where any sum is paid under subclause (1) of this regulation, the solicitor or secretary, as the case may be, shall pay out of it to the Crown all money owing to the Crown on the assisted person’s account. The balance (if any) shall be paid to the assisted person.

“(2A) Where any money is paid to the Crown under subclause (2) of this regulation and an order has been or is subsequently made under subsection (4A) of section 18 of the Act (as inserted by section 4 of the

Legal Aid Amendment Act 1971) by the Committee, the Crown shall refund to the assisted person or his solicitor such sum as shall be necessary to give effect to that order.”

9. **Financial statement**—Form 5 set out in the Schedule to the principal regulations is hereby amended by omitting from subclause (1) of the instructions relating to applicants who are minors the words “In such cases the resources of that parent should not be entered on the form”, and substituting the words “In cases (a) and (b) the resources of that parent need not be entered on the form. In case (c) the resources of neither parent need be entered on the form.”

10. **Application for exemption from Crown’s charge**—The Schedule to the principal regulations is hereby amended by adding the form 11 set out in the Schedule hereto.

SCHEDULE

Reg. 10

NEW FORM 11

Legal Aid Form 11

Reg. 24A (1)

APPLICATION FOR EXEMPTION FROM CROWN’S CHARGE

Application No. /

Date / / 19.....

Note:

If you have been granted legal aid and you have won your case, or it has been settled to your advantage, the Crown is entitled to recover the amount of money it has expended on your behalf from the property (or money) which you have obtained or retained at the end of the proceedings.

If you think this may cause you hardship you may apply to the District Legal Aid Committee that granted you legal aid for a total or partial exemption from liability to repay the Crown.

The application must be made on this form and sent to the secretary of the Committee within 28 days of the decision of the Court, or the settlement with any other party, as the case may be.

1. I, of hereby apply for the following exemption
 (name) (address)
 from the charge created in favour of the Crown by section 18 (4) of the Legal Aid Act 1969:

[State whether you are asking for an exemption from the whole of the charge or a certain proportion of it, and whether you wish the exemption to apply to all the property or only to a certain part of it.]

2. [Cross out the alternative that does not apply.]

The proceedings in respect of which I was granted legal aid were heard before the Magistrate’s/Supreme/..... Court at
 on the following date(s); (location)

or

The proceedings in respect of which I was granted legal aid were not brought/completed because the dispute was settled by an agreement between the parties dated the day of 19.....

3. I attach a copy of the Court order/agreement.

[If there was no written Court order or agreement cross out this line and give brief details of the terms of the Court's decision, or of the agreement.]

4. *[Cross out the alternative that does not apply.]*

Since my application for legal aid was granted there has been no change in my financial position.

or

Since my application for legal aid was granted my financial position has changed in the following respects:

[Give details of any changes that have occurred in your assets, liabilities, or responsibilities. Do not take into account the changes caused by the Court order or agreement which ended the dispute.]

5. I am applying for the exemption on the following grounds:

6. The lawyer who acted for me was:

Name of lawyer

Firm (if known)

Address

Signed

Applicant.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations vary the provisions of the principal regulations relating to exemptions from contributions, procedure on application for legal aid, the Crown's charge on property recovered in proceedings where legal aid has been given, and forms.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 22 June 1972.

These regulations are administered in the Department of Justice.