



## ANALYSIS

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1974, No. 58

**An Act to amend the Legal Aid Act 1969**

[21 October 1974]

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**—This Act may be cited as the Legal Aid Amendment Act 1974, and shall be read together with and deemed part of the Legal Aid Act 1969 (hereinafter referred to as the principal Act).

**2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “home”, the following definition:

“‘Income’, in relation to an applicant for legal aid or in relation to any other person whose income is required to be determined for the purposes of this

Act, includes (subject to the exceptions hereinafter set out) all money and the value of all benefits derived or received by that person from any source for his own use or advantage, but does not include—

“(a) Any capital money received from any source:

“(b) Any family benefit received under Part I of the Social Security Act 1964, or the value of any benefit under Part II of that Act, or the amount or value of any supplementary assistance granted out of the Consolidated Revenue Account from money appropriated by Parliament under paragraph (d) of subsection (1) of section 124 of that Act:

“(c) Any pension or allowance under the War Pensions Act 1954 (not being an economic pension or a war veteran’s allowance) received by any person by reason of his own disablement:

“(d) Any pension (not being a mother’s allowance) received under Part II or Part IV or Part V of the War Pensions Act 1954 by the widow of a deceased member of the New Zealand or any other Commonwealth forces or of the Emergency Reserve Corps or of the New Zealand mercantile marine in respect of the death of that member:

“(e) Any pension or other periodical allowance or any part thereof received by any person from the Government of any Commonwealth country (other than New Zealand) which the Commission determines is analogous to a pension or allowance specified in paragraph (c) or paragraph (d) of this definition:

“(f) Any money received by way of funeral benefit from any friendly society:

“(g) Any money paid in respect of any military decoration and received by the recipient of such decoration:”.

**3. District Legal Aid Committees—**(1) Section 9 of the principal Act is hereby amended—

- (a) By omitting from paragraph (a) of subsection (2) the words “or more than ten”:
- (b) By inserting in subsection (6), after the word “member” in each place where it appears in that subsection, the words “or deputy of a member”.

(2) Section 9 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) In the absence from any meeting of a District Legal Aid Committee of any member of that Committee appointed under paragraph (b) or paragraph (c) of subsection (2) of this section, a deputy of that member appointed under this subsection may attend that meeting and act in his stead thereat. For the purposes of this subsection,—

“(a) The deputy of the member appointed under paragraph (b) of subsection (2) of this section shall be a Registrar or Deputy Registrar of the Supreme Court who is for the time being appointed as deputy of that member by the Secretary for Justice:

“(b) The deputy of the member appointed under paragraph (c) of subsection (2) of this section shall be an officer of the Department of Social Welfare who is for the time being appointed as deputy of that member by the Chairman of the Social Security Commission.”

**4. Scope of legal aid**—(1) Section 15 of the principal Act (as amended by section 33 of the Rent Appeal Act 1973) is hereby further amended by adding to subsection (1) the following paragraphs:

“(j) All applications, objections, and appeals under the Town and Country Planning Act 1953 or to the Town and Country Planning Appeal Board under any other Act:

“(k) All applications, objections, and submissions to any Council or body in any case where an appeal in relation to its decision thereon lies to the Town and Country Planning Appeal Board.”

(2) Section 15 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Paragraphs (j) and (k) of subsection (1) of this section shall not restrict any other paragraph of that subsection.”

**5. Financial conditions of legal aid**—Section 17 of the principal Act is hereby amended by repealing paragraph (c) of subsection (2), and substituting the following paragraph:

“(c) In respect of sums payable by the Crown under this Act on his behalf, he shall be required to make to the Crown a contribution of fifteen dollars unless he has no disposable income and in the opinion of the District Committee the making of such a contribution would cause him substantial hardship, and he shall be required to make to the Crown a further contribution up to the limit specified in section 18 of this Act.”

**6. Contributions from aided persons—**(1) Section 18 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) A person’s further contribution to the Crown under paragraph (c) of subsection (2) of section 17 of this Act in respect of any proceedings shall be—

“(a) A contribution in respect of income of the total of the following amounts:

“(i) One dollar for each complete two dollars of the first thousand dollars of his disposable income:

“(ii) Two dollars for each complete three dollars of his disposable income that is in excess of one thousand dollars but is not in excess of two thousand dollars:

“(iii) All of his disposable income that is in excess of two thousand dollars:

“(b) A contribution in respect of capital of the total of the following amounts:

“(i) Two dollars for each complete three dollars of his disposable capital that is not in excess of two thousand dollars:

“(ii) All of his disposable capital that is in excess of two thousand dollars:

“Provided that, if in the opinion of the District Committee the payment of a contribution under this subsection would cause him substantial hardship, the District Committee may vary that sum or waive his obligation to make such a payment.”

(2) Section 18 of the principal Act, (as amended by section 4 of the Legal Aid Amendment Act 1971, is hereby further amended by inserting, after subsection (2A), the following subsection:

“(2B) Where any District Committee has granted legal aid to any person in relation to proceedings in respect of which a

contribution is payable, the Chairman of that District Committee may give a certificate as to the amount so payable. Any such certificate may be lodged in a Magistrate's Court; and, upon being so lodged, the certificate shall have effect as if it were a judgment of that Court in favour of the Crown for that amount, and shall be enforceable accordingly."

(3) Section 18 of the principal Act, as so amended, is hereby further amended by adding to subsection (4B) the words "or within such further period as that District Committee may allow on application made to it in that behalf either before or after the expiration of those 28 days".

**7. Relief from contributions**—The principal Act is hereby amended by inserting, after section 18, the following section:

"18A. (1) In any case where any person is liable to pay any contribution to the Crown in relation to any domestic proceedings in which he has been granted legal aid by any District Committee, and (subsequent to the grant of the legal aid) the parties to the proceedings have become reconciled and have remained reconciled for at least 3 months, if the District Committee is satisfied that enforcement of payment of the whole or any part of the amount of the contribution would jeopardise the reconciliation, the District Committee may, if it thinks fit, order that the whole or any part of that amount shall be suspended, and may also, if it thinks fit, order that the whole or any part of that amount be written off.

"(2) Notwithstanding anything to the contrary in this Act, in any case where any such order has been made,—

"(a) If the order suspends the recovery of any sum, that sum shall not be recoverable during the period of suspension:

"(b) If the order writes off any sum, that sum shall not thereafter be recoverable."

**8. Assessment of disposable income and capital and of maximum contributions**—(1) Section 19 of the principal Act is hereby amended—

(a) By omitting from subsection (1) the word "prior":

(b) By omitting from subsection (1) the words "the amount mentioned in subsection (2) of this section", and substituting the words "such amounts specified in the Schedule to this Act as are appropriate":

(c) By repealing subsection (2).

(2) Section 19 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) The Governor-General may from time to time, by Order in Council, amend the Schedule to this Act by—

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

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

(3) Section 19 of the principal Act is hereby further amended by repealing paragraphs (a) to (c) of subsection (3), and substituting the following paragraphs:

“(a) Where the person has any interest in a home, the amount of the value of that interest:

“(b) Where the person has any interest in a motor vehicle other than a vehicle used principally as a commercial vehicle, the amount of the value of that interest:

“(c) The amount of the value of his household furniture, household appliances, personal clothing, and tools of trade:”.

(4) Section 19 of the principal Act is hereby further amended by adding to subsection (5) the following proviso:

“Provided that, where the dispute concerns matrimonial property or maintenance, or both matrimonial property and maintenance, the resources of the person shall be treated as including such proportion, if any, of the value of any item alleged to be in dispute as the District Committee considers fair and reasonable.”

(5) The principal Act is hereby amended by adding the Schedule set out in the Schedule to this Act.

**9. Appeals against decisions of District Committee**—Section 27 of the principal Act is hereby amended by adding the words “or within such further period as the Appeal Authority may allow on application made to it in that behalf either before or after the expiration of those 28 days”.

**10. Remuneration of persons giving legal aid**—(1) Subsection (1) of section 32 of the principal Act is hereby amended—

(a) By inserting, after the word "Registrar" in the second place where it appears in the subsection, the words "or a designated Deputy Registrar,":

(b) By inserting, after the word "Registrar" where it appears in paragraph (a), the words "or Deputy Registrar".

(2) Subsection (1) of section 32 of the principal Act is hereby further amended by adding the following further proviso:

"Provided also that the District Committee may disallow the whole or any part of any such sum."

**11. Regulations**—Section 38 of the principal Act is hereby amended by omitting from paragraph (e) the words "thirty dollars", and substituting the expression "15 dollars".

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## SCHEDULE

Section 8 (5)

### SCHEDULE TO THE PRINCIPAL ACT

#### "SCHEDULE

Section 19 (1)

#### AMOUNTS TO BE DEDUCTED IN DETERMINING DISPOSABLE INCOME

(1) Personal allowance of \$2,280.

(2) 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, an allowance of \$928.

(3) An allowance in the case of dependent children or a dependent relative, not being the person's wife or husband,—

(a) In the case of an unmarried person of—

(i) \$980 for the first child or dependent relative:

(ii) \$156 for the second child or dependent relative:

(iii) \$65 for each additional child or dependent relative after the second.

(b) In any other case of—

(i) \$156 for the first child or dependent relative:

(ii) \$65 for each additional child or dependent relative after the second.

(4) The amount of income tax on his 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."

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This Act is administered in the Department of Justice.

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