

OFFENDERS LEGAL AID BILL

EXPLANATORY NOTE

This Bill is in substitution for the Poor Prisoners' Defence Act 1933 and its amendments, and certain provisions of the Criminal Appeal Act 1945. Under those enactments a person committed for trial for an indictable offence, or charged in the Magistrate's Court with any offence, may be granted legal aid by the Court and have counsel assigned to him for the preparation and conduct of his defence, and an appellant may be granted similar aid. These provisions are defective in that they do not apply to persons committed to the Supreme Court for sentence after a plea of guilty; nor do they apply to certain cases provided for in the Criminal Justice Bill (for example, proceedings to have a probationer sentenced for his original offence when he is convicted of a breach of probation, or a committal for sentence of a person convicted and liable to preventive detention).

The effect of this Bill is that legal aid may be granted by the Court, in respect of any stage of any criminal proceedings, to any person charged with or convicted of an offence.

Clause 2 replaces sections 2 to 4 of the 1933 Act and sections 10 and 13 (2) of the Criminal Appeal Act 1945, and the amendments to both of those Acts made by sections 9 and 41 of the Statutes Amendment Act 1948. It gives the Court a wider discretion to grant legal aid, and sets out the matters to which the Court is to have regard.

Clause 3 re-enacts, with necessary modifications, section 5 of the Act of 1933, conferring power to make regulations to give effect to the Act.

Clause 4 repeals the 1933 Act and the other enactments referred to above.

Hon. Mr Webb

OFFENDERS LEGAL AID

ANALYSIS

Title.	2. Power of Court to grant legal aid to person charged with or convicted of offence.
1. Short Title and commencement.	3. Regulations.
	4. Repeals and savings.

A BILL INTITULED

AN ACT to make better provision for the grant of legal aid in criminal proceedings. Title.

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

1. (1) This Act may be cited as the Offenders Legal Aid Act 1954. Short Title and commencement.

(2) This Act shall come into force on the *first* day of *January*, nineteen hundred and fifty-five.

2. (1) Any Court having jurisdiction in criminal proceedings may, in respect of any stage of any criminal proceedings and in accordance with this Act, direct that legal aid be granted to any person charged with or convicted of any offence, if in its opinion it is desirable in the interests of justice to do so. Power of Court to grant legal aid to person charged with or convicted of offence.

(2) In considering whether to direct the grant of legal aid, the Court shall have regard to—

(a) The means of the person charged or convicted: 1933, No. 40, ss. 2-4
1945, No. 23, ss. 10, 13 (2)
1948, No. 77, ss. 9, 41

(b) The gravity of the offence:

(c) In respect of any appeal, the grounds of the appeal:

(d) Any other circumstances that in the opinion of the Court are relevant.

(3) Notwithstanding anything in the foregoing provisions of this section, in the case of a person charged with murder the Court shall have regard only to the means of that person, and shall direct that legal aid be granted if in its opinion his means are insufficient to enable him to obtain legal aid. 5 10

(4) Any direction given under this section may be in respect of the whole of the expenses of the person charged or convicted or in respect of such part of those expenses as the Court thinks fit.

(5) The power conferred on the Court by this section may be exercised, in accordance with any regulations made under this Act, by any Judge, Magistrate, or Justice. 15

(6) Where any direction is given under this section, the expenses to which it relates shall, in accordance with the regulations, be paid out of money appropriated for the purpose by Parliament. 20

Regulations.
1933, No. 40,
s. 5

3. (1) The Governor-General may from time to time, by Order in Council, make such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act. 25

(2) Without limiting the generality of the provisions of subsection *one* of this section, it is hereby declared that regulations may be made under this section for all or any of the following purposes: 30

(a) Prescribing the manner in which applications for legal aid may be made and dealt with:

(b) Providing for the assignment of counsel to persons to whom legal aid is to be granted, and regulating the manner in which counsel may be assigned: 35

(c) Prescribing the amounts payable in respect of legal aid, including the fees payable to counsel and the expenses payable to witnesses.

Repeals and
savings.

1933, No. 40
1945, No. 23

4. (1) The following enactments are hereby repealed, 40
namely:

(a) The Poor Prisoners' Defence Act 1933:

(b) Section ten and subsection two of section thirteen of the Criminal Appeal Act 1945:

(c) Sections nine and forty-one of the Statutes Amendment Act 1948: 1948, No. 77

(d) So much of the Second Schedule to the Summary Jurisdiction Act 1952 as relates to the Poor Prisoners' Defence Act 1933. 1952, No. 41

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(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the

See Reprint
of Statutes,
Vol. VIII,
p. 568

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provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done

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under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.