

Legal Aid Amendment Act 1971

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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

This Act may be cited as the Legal Aid Amendment Act 1971, 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 as from its commencement by repealing the definition of the term “person”, and substituting the following definitions:

“‘Person’ includes a trustee corporation (as defined in section 2(1) of the Administration Act 1969) where it applies for legal aid in connection with any proceedings in which it is concerned in a representative, fiduciary, or official capacity; but does not include—

“(a) Such a trustee corporation so as to authorise legal aid to be given to it in any other circumstances; or

“(b) Any other body of persons corporate or unincorporate so as to authorise legal aid to be given to such a body:

“‘Property’ includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest.”

3 Financial conditions of legal aid

(1) Section 17 of the principal Act is hereby amended as from its commencement by inserting in subsection (1), after the word “person” where it first occurs, the words “whether resident in New Zealand or not”.

(2) Section 17 of the principal Act is hereby further amended as from its commencement by adding to subsection (1) the following proviso:

“Provided also that legal aid shall not be granted, without the consent of the Minister, to a person who is not resident in New Zealand at the time when he applies for legal aid.”

(3) Section 17 of the principal Act is hereby further amended by repealing paragraph (d) of subsection (2).

4 Contributions from aided person and charge on property recovered

(1) Section 18 of the principal Act is hereby amended as from its commencement by inserting, after subsection (2), the following subsection:

“(2a) Where any person is required to make any contribution to the Crown under this Act, the amount of that contribution shall be recoverable from that person as a debt due to the Crown.”

(2) Section 18 of the principal Act is hereby further amended by repealing subsections (3), (4), and (5), and substituting the following subsections:

“(3) If the total contribution paid to the Crown under this Act by a person in respect of any proceedings exceeds the aggregate amount of the sums referred to in paragraphs (a) and (b) of subsection (7) of this section, the excess shall be repaid to him.

- “(4) Subject to the provisions of subsection (4a) of this section and except as far as regulations made under this Act otherwise provide, any sums remaining unpaid on account of a person’s contribution to the Crown under this Act in respect of any proceedings and a sum equal to the further amount which the Crown is entitled to claim from him under this section shall, notwithstanding anything to the contrary in any other Act, be a charge for the benefit of the Crown on any property (wherever situate) which is recovered or preserved for him in the proceedings, and that charge may be registered against any land to which it relates in accordance with the provisions of the Statutory Land Charges Registration Act 1928.
- “(4a) On the application of a person for whom any property has been recovered or preserved in any proceedings, which property but for the provisions of this subsection would be subject to a charge in favour of the Crown under subsection (4) of this section, the District Committee which granted him legal aid may, if having regard to the value or nature of the property so recovered or preserved and to all other relevant circumstances it is of the opinion that it would be just and equitable so to do, make an order exempting the whole or any part of that property from the whole or any part of the charge created by subsection (4) of this section.
- “(4b) An application under subsection (4a) of this section shall be made to that District Committee within 28 days from the date of the order or agreement by which the property was recovered or preserved for him.
- “(4c) After the District Committee has given due consideration to an application under subsection (4a) of this section, it shall—
- “(a) Decide whether to exempt the whole or any part of the property in respect of which the application is made from the whole or any part of the charge arising under the provisions of subsection (4) of this section;
 - “(b) Where it decides to exempt any part of the property in respect of which the application is made, specify the part or parts of the property to be exempted;
 - “(c) Where it decides to grant exemption from the whole or any part of the said charge, specify the extent of the exemption; and
 - “(d) Cause the applicant to be advised in writing of its decision, and, where applicable, of his right to appeal.
- “(5) The reference in subsections (4), (4a), and (6a) of this section to property recovered or preserved for any person in any proceedings shall include his rights under any compromise arrived at to avoid or bring to an end the proceedings and any sums recovered by virtue of an agreement or order for costs made in his favour with respect to the proceedings.”
- (3) Section 18 of the principal Act is hereby further amended as from its commencement by inserting, after subsection (6), the following subsection:

“(6a) Where any property is recovered or preserved in any proceedings for any person to whom legal aid has been given under this Act, that person shall take all steps necessary to enforce the judgment or compromise by which the property was recovered or preserved, and if he fails to do so the Crown may enforce the judgment or compromise as if it were in favour of the Crown. Where the Crown takes any action under this subsection, it may recover the cost of so doing from the person to whom legal aid was granted so far as that cost is not met by the other party.”

(4) Section 18 of the principal Act is hereby further amended by repealing subsection (7), and substituting the following subsection:

“(7) The reference in subsection (4) of this section to the further amount which the Crown is entitled to claim from any person under this section in respect of any proceedings refers to the aggregate amount of—

“(a) The sums payable under paragraph (a) of subsection (1) of section 32 of this Act in respect of costs on account of disbursements; and

“(b) The sums which but for the provisions of this Act would have been properly chargeable to that person in respect of profit costs and counsel’s fee, less the total contribution payable to the Crown under this Act by that person in respect of those proceedings.”

5 Applications for legal aid

Section 20 of the principal Act is hereby amended as from its commencement—

(a) By inserting, after the word “resident”, the words “or (where the applicant is not resident in New Zealand) to the Secretary for Justice”:

(b) By omitting the words “by that secretary and District Committee”.

6 Circumstances in which grant of legal aid may be refused

Section 23 of the principal Act is hereby amended by inserting in subsection (2), after paragraph (d), the following paragraph:

“(da) If, in any case where the applicant is not resident in New Zealand, the District Committee to which the application has been referred by the Secretary for Justice is of the opinion that the proceedings might reasonably be brought in a jurisdiction other than New Zealand:”.

7 Decision in respect of applicant not resident in New Zealand

Section 25 of the principal Act is hereby amended by adding as subsections (2) and (3) the following subsections:

“(2) Notwithstanding anything in the foregoing provisions of this section, where an 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

District Committee to which the application has been referred by the Secretary for Justice shall—

“(a) Consider the application; and

“(b) Advise the Minister in writing whether it is of the opinion that legal aid should be granted or refused, and, if it is of the opinion that legal aid should be granted, the amount of legal aid which in its opinion should be granted and the conditions (if any) on which in its opinion legal aid should be granted, and in every case the reasons on which its opinion is based,—

but in no case shall the District Committee disclose its opinion to the applicant or his solicitor or any other interested person.

“(3) When the Minister has decided whether or not legal aid is to be granted to an applicant who was not resident in New Zealand at the time when the application was made, he shall cause the applicant to be advised in writing of his decision and, notwithstanding the provisions of section 27 of this Act, his decision shall be final.”

8 Appeals against decisions of District Committee

Section 27 of the principal Act is hereby amended by inserting, after the words “on his behalf”, the words “or to refuse to make an order under subsection (4a) of section 18 of this Act exempting the whole or any part of any property recovered or preserved for him from the whole or any part of the charge arising under the provisions of subsection (4) of that section”.

9 Applications in a representative, fiduciary, or official capacity

Section 30 of the principal Act is hereby amended as from its commencement by omitting from subsection (2) the words “determining any contribution to be made to the Crown under”.

10 Expenses of overseas travel

Section 32 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1a) Notwithstanding anything in subsection (1) of this section, 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. 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.”

11 Regulations

Section 38 of the principal Act is hereby amended by omitting from paragraph (c) the words “fifty dollars”, and substituting the expression “\$100”.

This Act is administered in the Department of Justice.