

LEGAL ASSISTANCE ACT.

Act No. 17, 1943.

An Act to make provision for the granting of legal assistance to persons of limited means and with limited income; to provide for the appointment of a Public Solicitor and to define his powers, authorities, duties and functions; to amend the Poor Persons Legal Remedies Act, 1918, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 29th June, 1943.]

George VI.
No. 17, 1943.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Legal Assistance Act, 1943."

Short title
and com-
mencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. In this Act, unless the context or subject matter otherwise indicates or requires,—

Definitions.

"Assisted person" means a person who has been granted a certificate that he is entitled to legal assistance under this Act, and, where such person is an infant, includes his next friend;

"Prescribed" means prescribed by this Act or by the regulations;

"Public Solicitor" means the person for the time being holding the office of Public Solicitor under this Act;

"Regulations" means regulations made under this Act.

3.

Legal Assistance Act.

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Public
Solicitor.

3. (1) The Governor may appoint a person to be the Public Solicitor.

The person so appointed shall be a solicitor of the Supreme Court.

A person who is of or above the age of sixty-five years shall not be appointed as Public Solicitor.

(2) The Public Solicitor shall have and may exercise and discharge the powers, authorities, duties and functions conferred and imposed upon the Public Solicitor by or under this Act.

(3) The Public Solicitor shall be paid such remuneration as may be determined by the Governor.

(4) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to the appointment of the Public Solicitor, and the Public Solicitor shall not be subject to any of such Acts during his term of office.

(5) The Public Solicitor shall, subject to this Act, hold office until he attains the age of sixty-five years.

(6) The Public Solicitor shall be deemed to have vacated his office if he—

- (a) engages (whether in New South Wales or elsewhere) during his term of office in any paid employment outside the duties of his office;
- (b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary or estate for their benefit;
- (c) absents himself from duty for a period of more than fourteen consecutive days, except on leave granted by the Minister;
- (d) becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898;
- (e) resigns his office by writing under his hand addressed to the Governor;
- (f) is removed from office by the Governor.

(7) The Governor may, for any cause which appears to him sufficient, remove the Public Solicitor from office.

(8) (a) A person who, at the date of his appointment as Public Solicitor, is an officer of the Public Service shall, in the event of his office as Public Solicitor being discontinued or abolished, be entitled, if he is under the

age

age of sixty years, to be appointed upon the recommendation of the Public Service Board to some office in the Public Service not lower in classification and salary than that which he held immediately before his appointment as Public Solicitor. No. 17, 1943.

(b) Nothing in this Act shall affect the rights accrued or accruing under the Public Service Act, 1902, or under the Superannuation Acts, 1916-1940, or any Acts amending such Acts, to any person appointed as Public Solicitor, who is at the time of his appointment or has been at any time previous thereto an officer of the Public Service or an employee within the meaning of the Superannuation Acts, 1916-1940, or any amendment thereof.

(c) Any officer of the Public Service or person who is an employee within the meaning of the Superannuation Acts, 1916-1940, or any amendment thereof, appointed as Public Solicitor shall continue to contribute to any fund or account and be entitled to receive any deferred or extended leave, and any payment, pension or gratuity as if he were an officer or employee within the meaning of the Public Service Act, 1902, or the Superannuation Acts, 1916-1940, as the case may be, or any Acts amending such Acts, and for such purpose his service as Public Solicitor shall be deemed to be service for the purpose of such Acts.

(9) A deputy may be appointed by the Governor to act for the Public Solicitor during the illness or absence of the Public Solicitor, and every such deputy shall, during the time he acts as deputy, have the same powers, authorities, duties and functions as the Public Solicitor and shall receive such salary or remuneration as the Governor may direct.

No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising such deputy so to act or as to the necessity or propriety of such appointment and all such acts or things done or omitted by such deputy shall be as valid and effectual and shall have the same consequences as if the same had been done or omitted by the Public Solicitor.

4. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint and employ such officers and employees as may be necessary for the execution of this Act. Officers and employees.

(2)

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(2) For the purposes of this Act the Minister may, with the approval of the Minister of the Department concerned and of the Public Service Board, on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

List of
barristers
and
solicitors.

5. The Public Solicitor shall keep a list of barristers and solicitors of the Supreme Court who are willing to investigate and report upon the application of any person to be granted legal assistance under this Act, or to act for any assisted person in any proceedings.

Application
for
assistance.

6. (1) Any person who desires to be granted legal assistance under this Act shall make application in that behalf to the Public Solicitor.

Every such application shall be in or to the effect of the prescribed form, shall furnish the particulars indicated in the form and shall be verified as prescribed.

(2) Where the person who desires to be granted legal assistance under this Act is an infant the application under this section shall be made on behalf of the infant by his next friend.

For the purposes of any such application the expression "applicant" wherever appearing in subsection three or in subsection four of this section, shall be construed as including the infant and the next friend or either of them.

(3) Where an application is made under this section the Public Solicitor may—

- (a) make such inquiries as he thinks fit as to the means and condition of the applicant and as to the merits of the case;
 - (b) require the applicant to furnish such information and such books, documents and writings as the Public Solicitor may require for the purpose of considering the application;
 - (c) require the applicant to attend personally;
 - (d) refer the application or any matter arising out of the application to any barrister or solicitor to investigate the facts and make a report thereon or to give any opinion thereon or on any question of law arising out of the application;
- (e)

- (e) take or cause to be taken such steps as may be necessary to conserve the interests of the applicant pending the determination of his application; No. 17, 1943.
- (f) defray expenses incidental to any of the foregoing matters out of any funds in his control which are available for the purpose.

(4) The Public Solicitor may grant to the applicant a certificate that the applicant is entitled to legal assistance under this Act where he is satisfied that—

- (a) the applicant has reasonable grounds for taking, defending, continuing or being a party to proceedings in the Supreme Court or in a district court or to such proceedings or class of proceedings in such other court as may be prescribed; and
- (b) the applicant is not possessed of or entitled to property of a total value of more than one hundred pounds exclusive of—
- (i) the subject matter of the proceedings;
 - (ii) wearing apparel of the applicant;
 - (iii) tools of trade of the applicant;
 - (iv) household furniture used by the applicant in his home;
 - (v) a dwelling house owned and used by the applicant as his home where the value of the interest of the applicant in that dwelling house does not exceed seven hundred and fifty pounds; and
- (c) the income of the applicant, together with the income (if any) of the spouse of the applicant, during the period of twelve months preceding the making of the application, after deducting therefrom an amount equal to fifty pounds for each person totally dependent on the applicant or spouse, does not exceed the multiple of fifty pounds next above the annual equivalent of the needs basic wage assessed on the index number for Sydney for the quarter current at the date of the application, together with the fixed loading addition applicable to the needs basic wage so assessed.

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(5) (a) The Public Solicitor may, at any time, and whether or not application has been made for the purpose cancel any certificate issued under this section, and subject to paragraph (b) of this subsection the person to whom the certificate was granted shall, as from the date of such cancellation, cease to be an assisted person.

(b) When the certificate so cancelled has been filed in the office of any court the Public Solicitor shall notify the court of such cancellation, and, as from the date of such notification, the person to whom the certificate was granted shall cease to be an assisted person.

Applica-
tions for
assistance
by more
than one
party.
cf. Act No.
43, 1928
(W.A.),
s. 8.

7. If, in relation to any proceedings to which a person who has made an application for legal assistance under this Act or an assisted person is a party, any other party makes application for legal assistance under this Act, the provisions of this Act shall apply to both such parties:

Provided that the Public Solicitor shall not himself act for either such party but shall assign a solicitor whose name is on the list of solicitors kept pursuant to section five of this Act to act for each assisted person.

Endorse-
ment
and filing
of certifi-
cate.

8. (1) Where a certificate is granted pursuant to section six of this Act the Public Solicitor may act for the assisted person or may assign a solicitor so to act, and in such case shall endorse on the certificate the name of the solicitor so assigned.

The solicitor so assigned shall be either a solicitor employed in the office of the Public Solicitor or a solicitor whose name is on the list of solicitors kept pursuant to section five of this Act.

Except where the Public Solicitor acts for an assisted person or assigns a solicitor employed in the office of the Public Solicitor so to act, he shall, where the assisted person has nominated a solicitor whose name is on the list of solicitors kept pursuant to section five of this Act, assign the solicitor so nominated to act for the assisted person.

Where the solicitor so assigned conducts his practice in a country town there may also be assigned a solicitor practising in Sydney to act as agent for such country solicitor in the proceedings.

(2)

(2) Where a solicitor employed in the office of the Public Solicitor is assigned to act for an assisted person, such solicitor shall be competent to appear and shall have the right of audience in all courts in New South Wales in all matters and proceedings in which he acts as solicitor pursuant to such assignment. No. 17, 1943.

(3) Where the Public Solicitor acts for an assisted person or a solicitor employed in the office of the Public Solicitor is assigned to act for an assisted person and so acts, the Public Solicitor or the solicitor so assigned, as the case may be, may appear and may conduct any matter or proceeding in any court either personally or by any barrister or solicitor employed in the office of the Public Solicitor.

(4) Before taking any other step in the proceedings the Public Solicitor or the solicitor so assigned shall file the certificate in the office of the court in which the proceedings are pending or are to be taken.

No court fee shall be charged in respect of the filing of the certificate.

(5) Where any certificate is so filed the assisted person—

- (a) shall not be liable for court fees in respect of any proceeding to which the certificate relates; and
- (b) shall be entitled to be supplied free of charge with a copy of any shorthand notes taken and transcribed by the official shorthand writer in any proceeding to which the certificate relates; and
- (c) shall not, except where express provision is made in this Act, be liable for costs to any other party in any proceeding to which the certificate relates.

(6) No person who, pursuant to any reference under this Act, makes any investigation or report or gives any opinion, or who pursuant to any assignment under this Act conducts any proceedings, shall, except as provided in sections eleven and fourteen of this Act, take or agree to take or seek from an assisted person any fee, profit or reward (pecuniary or otherwise) in respect thereof.

Nothing

No. 17, 1943. Nothing in this subsection shall preclude the Public Solicitor or any assigned solicitor from charging out of pocket expenses (not including office expenses).

Deposit in respect of out of pocket expenses.

9. (1) The Public Solicitor may require any applicant for legal assistance under this Act, or any assisted person to deposit with him such amounts, at such times as the Public Solicitor may think fit, to be used in or towards meeting out of pocket expenses (not including office expenses) incurred in connection with the application or with any proceeding to which the application or the certificate relates.

Any amounts so deposited shall be used only for the payment of such out of pocket expenses. Any part of any such amount not so expended shall be refunded.

(2) In any case where the Public Solicitor is satisfied that the making of a deposit under subsection one of this section would occasion hardship to an applicant for legal assistance or an assisted person, the Public Solicitor may, out of any funds in his control which are available for the purpose, from time to time, meet any out of pocket expenses (not including office expenses) or advance to the applicant or assisted person or to the solicitor assigned to act for an assisted person an amount to meet such out of pocket expenses.

Any advance so made shall be used only for the payment of such out of pocket expenses. Any part of any such amount not so expended shall be refunded to the Public Solicitor.

Waiver of certain fees. cf. Act No. 2322, 1936 (S.A.), s. 3 (2) (3).

10. (1) The Minister may, upon the application of the Public Solicitor, direct that the payment of fees be waived in respect of all or any of the following matters:—

- (a) the provision of a certified or other copy or abstract of any document or record kept by any officer in the employment of the Crown or of any statutory body representing the Crown;
- (b) any search in any register or index kept by any such officer;
- (c) production of any such document, record or register.

(2) No such direction shall be given unless the Minister is satisfied that the provision of the certified or other copy or abstract, or the making of the search or the

the production of the document, record or register is required in connection with any legal professional work carried out or to be carried out for an assisted person. No. 17, 1943.

(3) A direction of the Minister given under this section shall be effective to waive payment of the fees referred to in the direction notwithstanding that such fees are imposed by or under the authority of any Act.

11. (1) Where it appears to a court or judge that a certificate under section six of this Act has been obtained by fraud or misrepresentation the court or judge may order the assisted person to pay the costs of the solicitor who acted for him or the costs of the other party, or the costs of both such solicitor and such party.

Court may order payment of costs by assisted person in certain events. cf. Ord. 16, R. 31aB (Engl.).

In this subsection a reference to an "assisted person" shall include, in any case where the certificate has been cancelled before the making of the order, the person who, immediately before such cancellation, was the assisted person.

(2) Where it appears to a court or judge that an assisted person has acted improperly in bringing or defending any legal proceedings or in the conduct of them the court or judge may order the assisted person to pay the costs of the solicitor who acted for him or the costs of the other party, or the costs of both such solicitor and such party.

(3) Where an order is made under subsection one or subsection two of this section the costs shall be taxed as if the party ordered to pay them were not an assisted person.

(4) The costs so ordered to be paid shall, unless otherwise directed by the order, include—

- (a) fees and charges of the nature referred to in paragraphs (a) and (b) of subsection five of section eight of this Act; and
- (b) fees the payment of which has been waived pursuant to section ten of this Act; and
- (c) any sums which, pursuant to subsection two of section nine of this Act were expended by the Public Solicitor in meeting out of pocket expenses or were advanced by the Public Solicitor for that purpose.

(5)

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(5) Where the costs ordered to be paid include any of the fees, charges or sums referred to in subsection four of this section, then if any amount is recovered in respect of costs—

- (a) by the Public Solicitor or a solicitor employed in the office of the Public Solicitor, the same shall be applied in or towards the satisfaction of such fees, charges or sums, and any excess shall be paid to the Consolidated Revenue Fund;
- (b) by any other solicitor, such solicitor shall out of the amount so recovered pay such fees, charges or sums in priority to all other items included in the costs.

Privileges attaching to certain relationships.

12. (1) The like privileges as those which arise from the relationship of client and solicitor acting in his professional capacity and in the course of his professional employment shall arise from the following relationships, that is to say—

- (a) the relationship between an applicant for legal assistance under this Act and the Public Solicitor and the solicitor (if any) to whom the application is referred;
- (b) the relationship between an assisted person and the Public Solicitor and the solicitor (if any) assigned to act for him in any proceedings to which the certificate under section six of this Act relates.

(2) The fact that a plaintiff in any action of tort has made application for legal assistance under this Act, or is an assisted person, shall not be admissible in evidence upon any application for an order under section one hundred and forty of the District Courts Act, 1912-1936, as amended by subsequent Acts.

Assistance not to be discontinued without leave. cf. Poor Persons Rules, 1938, RR. 15, 16.

13. (1) An assisted person shall not without the leave of the Public Solicitor discharge any barrister or solicitor assigned to act for him.

(2) Any barrister or solicitor assigned to act for an assisted person shall not discontinue his assistance without the leave of the Public Solicitor:

Provided that any barrister or solicitor may be represented by any other barrister or solicitor.

14.

14. (1) The court in which are taken proceedings to which an assisted person is a party shall make, in favour of the assisted person, the like order for costs (except against another assisted person) as that court would have made in favour of the assisted person had he not been an assisted person, and in proceedings in which costs follow the event an assisted person shall (except against another assisted person) be entitled to costs in like manner as if he were not an assisted person, notwithstanding that no amount is or will be payable by the assisted person, or that the costs are in excess of the amount which is or will be payable by the assisted person.

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Costs.

cf. Act No. 2322, 1932 (S.A.), s. 6.

(2) Where any moneys are recovered by an assisted person (whether in proceedings or by virtue of a settlement or compromise) he shall be liable to pay to the solicitor who acted for him so much of the moneys so recovered as is recovered in respect of costs.

For the purposes of this subsection the moneys recovered in respect of costs shall be deemed to be so much of the total amount so recovered as exceeds the amount (if any) recoverable by the assisted person otherwise than as costs.

(3) Where any moneys are recovered by an assisted person (whether in proceedings or by virtue of a settlement or compromise) he shall, subject to this subsection, be liable to pay, out of the moneys so recovered, to the solicitor who acted for him, such sum in respect of costs as would have been allowed to that solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner:

cf. Ord. 15, R. 31c (Engl.).

Provided that—

(a) where the amount which remains after deducting from the moneys recovered all allowable disbursements, other than barrister's fees, properly made by the solicitor (which amount is in this subsection hereinafter referred to as the "net amount recovered") does not exceed fifty pounds, no sum shall be payable by the assisted person under this subsection;

(b)

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(b) where the net amount recovered exceeds fifty pounds the sum payable by the assisted person under this subsection shall not exceed—

(i) one-fourth of the net amount recovered;
or

(ii) the difference between the net amount recovered and the amount of fifty pounds,

whichever is the less.

(4) Without prejudice to the generality of subsection one or subsection two or subsection three of this section the expression "costs" shall include—

(a) barrister's fees whether or not the same have been paid; and

(b) fees and charges of the nature referred to in paragraphs (a) and (b) of subsection five of section eight of this Act; and

(c) fees the payment of which has been waived pursuant to section ten of this Act; and

(d) any sums which, pursuant to subsection two of section nine of this Act, are expended by the Public Solicitor in meeting out of pocket expenses or are advanced by the Public Solicitor for that purpose.

(5) Where the costs recovered by the Public Solicitor or by a solicitor employed in the office of the Public Solicitor include any of the fees, charges or sums referred to in subsection four of this section, such costs shall be applied, in the first instance, in or towards satisfaction of the fees, sums and charges referred to in paragraphs (b), (c) and (d) of that subsection, and subject thereto in or towards satisfaction of the fees referred to in paragraph (a) of that subsection and any excess shall be paid to the Consolidated Revenue Fund.

Where the costs recovered by any other solicitor include any of the fees, charges or sums referred to in paragraphs (b), (c) and (d) of this subsection the same shall be paid, by the solicitor or other person receiving payment of the costs, in priority to all other items included in the costs.

15. (1) Where litigation has been instituted and any party makes an application for legal assistance under this Act the Public Solicitor shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file in the court in which the litigation is pending a memorandum of such notification.

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Stay of proceedings upon making of application for assistance.

cf. Poor Persons Rules, 1938, R. 9.

No fee shall be charged in respect of the filing of the memorandum.

(2) Where any memorandum is so filed, then, unless otherwise ordered by a judge of the court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this section, be stayed for a period of fourteen days:

Provided, however—

(a) that the filing of the memorandum shall not operate to prevent the making of—

(i) an interlocutory order for an injunction or for the appointment of a receiver or manager or a receiver and manager; or

(ii) a stop order; or

(iii) an order to prevent the lapse of a caveat against dealings with land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; or

(iv) any other order which, in the opinion of a judge of the court in which the litigation is pending, is necessary to prevent an irremediable injustice;

(b) that, unless otherwise ordered by a judge of the court in which the litigation is pending, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in paragraph (a) of this proviso or a decree to the like effect.

(3) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of a judge of the court in which the litigation is pending.

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Appeals by
assisted
persons.

16. (1) Where a certificate granted pursuant to section six of this Act has been filed in any court, and the proceeding to which the certificate relates has been heard in that court, and the assisted person desires to prosecute any appeal or proceeding in the nature of an appeal therefrom, he shall not be entitled to prosecute such appeal or proceeding in the nature of an appeal as an assisted person unless he files in the court in which the appeal or proceeding is to be heard a certificate from a barrister (not being the barrister who acted for the assisted person in the proceeding) nominated by the Public Solicitor stating that such barrister has thoroughly examined the appellant's case and is of opinion that the appellant has good grounds of appeal, which grounds, together with the reasons therefor, shall be set out in detail in the certificate.

(2) If any assisted person prosecutes any such appeal or proceeding in the nature of an appeal without having filed the barrister's certificate referred to in subsection one of this section he shall be deemed not to be an assisted person.

Appeals to
High Court
or Privy
Council.

17. (1) Where a person who has, as an assisted person, been a party to proceedings in any court in New South Wales, desires to be granted legal assistance under this Act for the purpose of taking or contesting an appeal to the High Court of Australia or to the Privy Council, he may make application in that behalf to the Public Solicitor.

(2) Where the Public Solicitor is satisfied that the applicant has good grounds for taking or contesting the appeal he may act for such person or may assign a solicitor so to act.

The provisions of subsection one of section eight of this Act shall, *mutatis mutandis*, apply to and in respect of any assignment made under this section.

The provisions of subsection six of section eight and of section nine of this Act shall apply to and in respect of such person and such proceedings in like manner as they apply to and in respect of assisted persons and proceedings taken by assisted persons.

18.

18. (1) Where it is necessary or convenient so to do for carrying out or giving effect to this Act or the regulations, rules of court of any court in which proceedings may be taken by any person as an assisted person may be made for regulating the practice and procedure of such court. No. 17, 1943.
Rules of
court.

(2) All rules of court so made shall—

- (a) be published in the Gazette;
- (b) take effect from the date of such publication or from a later date to be specified in such rules of court; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such rules of court have been laid before such House disallowing any rule of court or part thereof such rule of court or part shall thereupon cease to have effect.

19. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters (other than the regulation of the practice and procedure of any court having authority to make rules of court for that purpose) which, by this Act, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Without prejudice to the generality of subsection one of this section the regulations may—

- (a) regulate all matters relating to fees, charges and costs in or in relation to proceedings to which an assisted person or other person of limited means is a party;
- (b) remit or provide for the remission of any fees or charges in any such proceedings.

(3)

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(3) The regulations may apply generally to all legal matters, whether relating to proceedings in court or otherwise, or may apply to any specified class of matters or proceedings or to all matters or proceedings other than matters or proceedings of a specified class.

(4) Where regulations are made prescribing proceedings or any class of proceedings in any court, other than the Supreme Court or a district court, in respect of which a certificate under section six of this Act may be granted the regulations—

(a) may prescribe the person who, in relation to such proceedings, is to exercise any power which, under section eleven or section fifteen of this Act, is exercisable by a judge or a judge of the court;

(b) may direct that for the purposes of any such proceedings subsection five of section eight of this Act shall be deemed to be amended by omitting from paragraph (b) thereof the words “shorthand notes taken and transcribed by the official shorthand writer” and by inserting in lieu thereof the words “depositions taken.”

(5) The regulations may impose a penalty not exceeding fifty pounds for any breach of the regulations.

(6) The regulations shall—

(a) be published in the Gazette;

(b) take effect from the date of publication or from a later date to be specified in the regulations; and

(c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

20. The Poor Persons Legal Remedies Act, 1918, is amended by inserting next after subsection one of section three the following new subsection:—

(1A) No rule of court made before the commencement of the Legal Assistance Act, 1943, under subsection one of this section shall be construed as entitling a solicitor acting for any poor person to receive from such poor person or out of any fund established under the rules of court any sum on account of office expenses or the like or any sum on account of out of pocket expenses other than actual disbursements by such solicitor.

No. 17, 1943.
Amendment
of
Act No. 36,
1918, s. 3.
(Rules of
Court.)

