

LEGAL ASSISTANCE (AMENDMENT) ACT.

Act No. 30, 1947.

George VI.
No. 30, 1947. An Act to amend the Legal Assistance Act, 1943, in certain respects; and for purposes connected therewith. [Assented to, 9th December, 1947.]

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:—

Short
title and
citation.

1. (1) This Act may be cited as the "Legal Assistance (Amendment) Act, 1947."

(2) The Legal Assistance Act, 1943, as amended by this Act, may be cited as the Legal Assistance Act, 1943-1947.

Amendment
of Act
No. 17, 1943.
Sec. 6.
(Application
for
assistance.)

2. The Legal Assistance Act, 1943, is amended—

(a) (i) by omitting from subsection two of section six all words after the words "by his next friend" and by inserting in lieu thereof the words—

"Where any application is so made then—

(a) a reference in subsection three or in paragraph (a) of subsection four of this section to an "applicant" shall be construed as a reference to both the next friend and the infant jointly or to either of them severally;

(b)

- (b) a reference in paragraph (b) or paragraph (c) of subsection four of this section (as modified by subsection (4A) of this section) shall, in any case where the infant is unmarried and the next friend is a near relative (as defined in this subsection) of the infant be construed as a reference to both the next friend and the infant and in every other case shall be construed as a reference to the infant only.

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In this subsection the expression "near relative" means—

- (i) in the case of a lawful child—the father or, if the father be dead, the mother;
 - (ii) in the case of an adopted child—an adopting parent;
 - (iii) in the case of an illegitimate child—the mother."
- (ii) by inserting after subsection four of the same section the following new subsection:—

(4A) For the purposes of paragraphs (b) and (c) of subsection four of this section—

- (a) the Public Solicitor may, in any case where in his absolute discretion it appears to him to be reasonable to do so to relieve hardship, disregard any item or items of property.
- (b) the Public Solicitor may, in any case where an applicant is living separate and apart from his or her spouse, as the case may be, and where it appears to him in his absolute discretion to be reasonable to do so to relieve hardship, disregard the income of the spouse;
- (c)

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- (c) any payments by way of invalid pension or of child endowment under the Social Services Consolidation Act 1947 of the Parliament of the Commonwealth or under any Act amending or replacing that Act or by way of military pension or otherwise under the Australian Soldiers Repatriation Act 1920-1947 of the Parliament of the Commonwealth or under any Act amending or replacing that Act shall in no case be taken into account in determining the income of the applicant or as income in determining any question of the dependency of any person on the applicant.
- (iii) by omitting from paragraph (b) of subsection five of the same section the words "notify the court of such cancellation and, as from the date of such notification" and by inserting in lieu thereof the words "file in court a notification of such cancellation, and, as from the date of filing of such notification";
- (iv) by inserting at the end of the same subsection the following new paragraph:—
- (c) Upon the filing in court of such notification, 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 paragraph, be stayed for a period of seven days and, subject as aforesaid, during such period time fixed by or under any Act or by or under any rules of court regulations or otherwise for the doing of any act or the taking of any step in the proceeding shall not run.

(v)

- (v) by inserting after subsection five of the same section the following new subsections:—

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

(7) The Public Solicitor shall take such steps as seem to him to be reasonable or necessary to inform the person to whom a certificate has been granted of the cancellation of any such certificate.

- (b) (i) by inserting after the word “assigned” where firstly occurring in subsection one of section eight the following proviso:—

Sec. 8.
(Endorsement and filing of certificate.)

Provided that in any case where a solicitor is assigned to act after such certificate is filed in court, or in any case where a new assignment is made in lieu of a solicitor assigned previously, the Public Solicitor shall not be required to endorse on the certificate the name of the solicitor so assigned, or newly assigned, as the case may be, but may, instead, give notice of such assignment or new assignment by letter to the proper officer of the court in which the proceedings are pending.

- (ii) by omitting from paragraph (a) of subsection five of the same section the words “for court fees”;
- (iii) by inserting in the same paragraph after the word “relates” the words “for court fees, or for such fees payable for the service of process as are required to be carried to the Consolidated Revenue Fund”;

(c)

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- (c) (i) by inserting after subsection one of section twelve the following new subsection:—

(1A) Notwithstanding anything contained in subsection one of this section the privileges therein referred to shall not arise in relation to any information tendered to the Public Solicitor concerning the property or income of the applicant for a certificate under this Act.

- (ii) by inserting at the end of subsection two of the same section the words—

“and no material declaration or information whatsoever tendered to or otherwise in the hands of the Public Solicitor for the purpose of the application for legal assistance and relating to the property or income of the applicant, or assisted person, as the case may be, shall, except with the consent of the applicant or assisted person, be referred to or be admissible in evidence upon any application for any such order.”

Sec. 15.
(Stay of proceedings upon making of application for assistance.)

- (d) by inserting in subsection two of section fifteen after the words “fourteen days” the words—

“and, during such period (unless otherwise ordered by any such judge) time fixed by or under any Act or by or under any rules of court regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run”.