

1969

VICTORIA.



ANNO DUODEVICESIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 7919.

An Act to make Provision for Legal Aid.

[16th December, 1969.]

Preamble.

WHEREAS the Parliament of Victoria and the members of the Legal Profession of Victoria believe that no person should be without legal assistance by reason of his being unable to pay therefor :

And whereas the State of Victoria has provided legal assistance pursuant to the *Poor Persons Legal Assistance Act 1958* :

And whereas on behalf of the members of the legal profession as aforesaid the Victorian Bar Council and the Council of the Law Institute of Victoria voluntarily offered to provide legal assistance for persons of limited means and as a result thereof a scheme of legal assistance has been established and administered by the Legal Aid Committee pursuant to the *Legal Aid Act 1961* :

And whereas in order to make better provision for legal assistance as aforesaid the said Legal Aid Committee is prepared to extend the said scheme to civil matters presently dealt with pursuant to the *Poor Persons Legal Assistance Act 1958* :

And whereas the State of Victoria will continue to provide legal assistance for persons accused or convicted of indictable offences :

And whereas it is expedient to make provision as hereinafter enacted :

Be

Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Legal Aid Act 1969*.

Short title.

(2) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

Commencement.

(3) This Act is divided into Parts as follows :—

Division.

Part I.—Provision by the State of Legal Assistance in Criminal Matters ss. 2–4.

Part II.—Provision of Legal Assistance by the Legal Aid Committee ss. 5–14.

Part III.—Transitory and Supplementary ss. 15–23.

PART I.—PROVISION BY THE STATE OF LEGAL ASSISTANCE IN CRIMINAL MATTERS.

2. (1) Part I. of the *Poor Persons Legal Assistance Act 1958* and section 575 of the *Crimes Act 1958* are hereby repealed.

(2) Notwithstanding the provisions of sub-section (1)—

Repeal of provisions as to assistance in criminal matters.

(a) any arrangements made under the said Part I. before the commencement of this section for the defence of a person committed for trial for an indictable offence against the laws of Victoria or any assignment made under the said section 575 may be carried out after the commencement of this section in all respects as if the said provisions had not been repealed ; and

(b) any application made thereunder before the commencement of this section by a person committed for trial for an indictable offence against the laws of Victoria for legal aid for his defence or for any such assignment shall after the commencement of this section be deemed to be a sufficient application for the purposes of this Part and be considered and dealt with accordingly.

3. (1) The following persons may make application to the Attorney-General to cause arrangements to be made for their defence or representation and the payment of the expenses of all material witnesses, namely :—

Application for legal assistance.

(a) Any person committed for trial, whether in pursuance of the provisions of the *Justices Act 1958* or the *Coroners Act 1958*, for an indictable offence against the laws of Victoria ;

(b) Any

- (b) Any person to whom notice of trial for any such offence or notice of intention to prefer a presentment for any such offence has been given by or on behalf of the Attorney-General or the Solicitor-General or any Prosecutor for the Queen ;
- (c) Any person having been tried for any such offence who is directed to stand a further trial for that offence ;
- (d) Any person charged with treason murder or manslaughter ;
- (e) Any appellant to the Full Court of the Supreme Court upon any appeal with respect to an indictable offence ;
- (f) Any appellant to the Privy Council in respect of an offence for which he has been sentenced to death ; and
- (g) Any respondent to an appeal brought on behalf of Her Majesty.

(2) In the case of an appeal the provisions of this section shall have effect both with respect to making application for leave to appeal and to the hearing of the appeal.

(3) Every such application shall be in writing in the prescribed form and shall be delivered or posted to the Secretary to the Law Department unless otherwise provided by the regulations—

- (a) where the applicant is committed for trial—within fourteen days after such committal ;
- (b) where notice of trial or notice of intention to prefer a presentment has been given to the applicant—within fourteen days after receiving such notice ;
- (c) where the applicant is directed to stand further trial—within fourteen days after the direction to stand the further trial ;
- (d) where the applicant is charged with treason murder or manslaughter—within fourteen days after he is first charged with the offence ;
- (e) where the applicant is the appellant in an appeal—within the time limited for lodging notice of appeal or of making application for leave to appeal ; or
- (f) where the applicant is respondent to an appeal brought on behalf of Her Majesty—within fourteen days after receiving notice of the appeal.

4. In any case where the Attorney-General is of opinion that it is desirable in the interests of justice that an applicant should have legal representation on any proceedings referred to in his application and that the applicant is without adequate means to provide legal assistance for himself the Attorney-General may grant the application.

PART II.—PROVISION OF LEGAL ASSISTANCE BY THE LEGAL AID COMMITTEE.

5. (1) The *Legal Aid Act* 1961 is hereby repealed.

Repeal of
No. 6805.

(2) Except as in this Part expressly or by necessary implication provided—

(a) all persons things and circumstances appointed or created by or under the repealed Act or existing or continuing under such Act immediately before the commencement of this section shall under and subject to this Part continue to have the same status operation and effect as they respectively would have had if such Act had not been so repealed ;

(b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status or effect of any regulation appointment contract agreement decision grant direction judgment order settlement right or remedy made effected issued given delivered passed or existing or continuing by or under such Act before the commencement of this section.

6. In this Part unless inconsistent with the context or subject-matter :—

Interpretations.

“ Assisted person ” means person for whom legal assistance is provided under the scheme.

“ Assisted person.”

“ Committee ” means the Legal Aid Committee appointed or continuing in office pursuant to this Part.

“ Committee.”

“ Counsel ” means a person who is a barrister and solicitor of the Supreme Court of Victoria for the time being enrolled on the roll of counsel kept by the Victorian Bar Council and “ barrister ” has the same meaning.

“ Counsel.”

“ Court ” includes person acting judicially within the meaning of the *Evidence Act* 1958.

“ Court.”

“ Fund ” means the Legal Aid Fund established pursuant to this Part.

“ Fund.”

“ Scheme ” means the scheme for providing legal assistance established pursuant to this Part.

“ Scheme.”

“ Solicitor ” means a solicitor who holds a current practising certificate issued pursuant to the provisions of the *Legal Profession Practice Act* 1958.

“ Solicitor.”

7. (1) For the purposes of this Part there shall be a Legal Aid Committee consisting of eight members of whom four shall be appointed by the body known as the Victorian Bar Council and four shall be appointed by the Council of the Law Institute of Victoria.

Legal Aid
Committee.

(2) The

Committee
a body
corporate.

(2) The committee shall by the name of the "Legal Aid Committee" be a body corporate with perpetual succession and a common seal and shall be capable in law of suing and being sued and of acquiring holding and disposing of real and personal property for the purposes of this Act and of doing and suffering all such acts and things as bodies corporate may by law do and suffer.

(3) Three members of the committee shall be a quorum.

(4) Subject to there being a quorum the committee may act notwithstanding any vacancy in its membership.

(5) Subject to this Part the committee may regulate its own proceedings.

Legal assistance
scheme.

8. (1) The committee shall establish and administer a scheme for providing legal assistance either without payment therefor or upon payment of such sum or sums towards the costs and expenses thereof as the committee thinks reasonable.

Costs to
be charge
on property
recovered.

(2) Where the Committee provides legal assistance the costs thereof, to the extent to which payment is due by the assisted person, shall be a first charge for the benefit of the Legal Aid Fund on any property (wherever situate) which is recovered or preserved for him in the proceedings.

Provision for
payment of
disbursements
for assisted
persons.

9. Where pursuant to the scheme legal assistance is granted in any matter the committee may, if it thinks fit, direct that such sums as are necessary for the payment of any disbursements properly payable in that matter shall be paid out of the fund and may direct a higher amount to be so paid for any disbursement than is allowable under any regulation or rule relating thereto if it considers that it is necessary for the proper presentation of the assisted person's case that such higher amount should be paid.

Legal Aid
Fund.

10. (1) There shall be established in the Treasury in the Public Account as part of the Trust Fund a trust account to be called the "Legal Aid Fund".

(2) Into the Legal Aid Fund shall be paid—

(a) all moneys payable to the Treasurer of Victoria pursuant to the provisions of sub-section (3) of section 55A of the *Legal Profession Practice Act 1958* ;

(b) any moneys payable to the Legal Aid Fund pursuant to the provisions of section 3 of the *Appeal Costs Fund Act 1964* ;

(c) such

- (c) such sums as the Treasurer of Victoria from time to time thinks proper to be paid from the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly)—
- (i) for defraying the costs and expenses of administering the scheme ;
 - (ii) for making the payments referred to in section 9 and in sub-section (2) of section 12 ;
 - (iii) to enable the payments referred to in paragraph (c) in sub-section (3) of this section to be made to barristers and solicitors assisting in the scheme ;
- (d) all moneys paid to the committee by assisted persons ;
- (e) costs payable to the committee under sub-section (2) of section 11 ; and
- (f) any amount standing at the commencement of this Part to the credit of the special trust account established under section 9 of the *Legal Aid Act* 1961.
- (3) Out of the fund shall be paid—
- (a) the costs and expenses of administering the scheme ;
 - (b) payments of the kind referred to in section 9 and sub-section (2) of section 12 ;
 - (c) any amount certified to the Treasurer of Victoria by the committee from month to month to be required to provide for the payment by the committee to barristers and solicitors assisting in the scheme of eighty per centum of their total costs as certified by the committee.

Legal Costs.

11. (1) A court may make in favour of an assisted person any such order for costs as it may make in favour of a person who is not an assisted person notwithstanding that no amount has been paid or is or will be payable for costs by the assisted person in whose favour the order is made or that the costs so ordered are in excess of the total amount paid or payable for costs by the assisted person.

(2) All costs payable under the terms of any judgment or order or of any settlement of an action or claim to a person who has been assisted under the scheme in the obtaining of such judgment order or settlement (except any portion of such costs as may be for services rendered or disbursements paid for that person before he was so assisted) shall be payable to the committee which shall be entitled to exercise in the name of that person all the rights and remedies in relation to the recovery of such costs which that person would be entitled to exercise if he were not an assisted person.

(3) A person

(3) A person who is liable to pay any costs payable under this section to the committee and to whom or to whose solicitor notice in writing of the rights of the committee in relation thereto has been given by the committee or the solicitor who obtained the judgment order or settlement for the assisted person shall not be discharged from his liability by reason only of his making any payment in respect thereof to any person other than the committee or such solicitor.

(4) On the taxation of costs payable under the terms of any judgment or order or of any settlement of an action or claim to an assisted person no item thereof shall be disallowed merely because the assisted person is by reason of his being an assisted person under no obligation to pay in whole or in part for the service to which the item relates or in the case of a disbursement (whether for counsel's fees or otherwise) merely because the amount thereof has not been paid prior to the taxation.

Disposal of
costs.

12. (1) All costs received or recovered which are payable to the committee under section 11 and all moneys paid by assisted persons towards costs under any direction of the committee shall be paid by the committee to the credit of the fund.

(2) Where the costs paid into the fund in any matter and all moneys paid by the assisted person in respect of that matter together exceed the amount which in the opinion of the committee would if the assisted person were not an assisted person be properly chargeable to him for costs as between solicitor and client in that matter the amount of the excess shall be paid out of the fund to the assisted person.

(3) As soon as practicable after the end of each month the committee shall submit to the Treasurer a statement of the amount payable to barristers and solicitors assisting in the scheme being eighty per centum of their total costs as certified by the committee and the Treasurer shall cause the amount to be paid from the fund to the committee who shall disburse it to such barristers and solicitors in accordance with the statement.

Accounts.

13. (1) The committee shall keep proper accounts of all moneys received and disbursed by it and of all amounts owed to it by assisted persons and shall prepare a statement of accounts as at the thirtieth day of June in each year.

(2) The said accounts and statement of accounts shall be audited by the Auditor-General who shall have with respect to the said accounts and statement of accounts all the powers conferred on him by any law relating to the auditing of public accounts.

(3) As

(3) As soon as practicable after the accounts have been audited the committee shall send to the Attorney-General a copy of the statement of accounts and of the report of the Auditor-General thereon.

14. (1) No officer or employé of the committee shall, without the consent of the committee—

- (a) produce in any court any document received by the committee or any officer or employé of the committee in relation to any application for legal assistance ;
- (b) communicate or permit to be communicated to any person other than the solicitor acting for the assisted person or give in evidence in any court any information received by the committee or any officer or employé of the committee in relation to any application for legal assistance.

(2) No court shall have power to compel any such officer or employé to produce any such document or communicate or give in evidence any such information unless the committee has consented to that production or communication.

PART III.—TRANSITORY AND SUPPLEMENTARY.

15. (1) Section 5 of the *Poor Persons Legal Assistance Act* 1958 is hereby repealed.

(2) Notwithstanding the repeal effected by sub-section (1) and without in any way derogating from the provisions of Part II.—

- (a) all persons admitted before the commencement of this section to sue or defend *in forma pauperis* in the Supreme Court in any other jurisdiction than the divorce and matrimonial causes jurisdiction may continue their suits and defences as if sub-section (1) had not been passed ; and
- (b) all persons who made application to the Public Solicitor before the commencement of this section for legal assistance with respect to any suit or defence in the Supreme Court may submit a case for the opinion of the Public Solicitor and may be admitted to sue or defend *in forma pauperis* in the Supreme Court as if sub-section (1) had not been passed.

16. (1) Section 6 of the *Poor Persons Legal Assistance Act* 1958 is hereby repealed.

(2) Notwithstanding

Saving as to outstanding cases and applications for legal assistance.

Repeal of provisions for assistance in matrimonial causes.

Saving as to outstanding cases and applications for legal assistance.

(2) Notwithstanding the repeal of section 6 of the *Poor Persons Legal Assistance Act 1958* and without in any way derogating from the provisions of Part II.—

- (a) all persons admitted before the commencement of this section to sue or defend *in forma pauperis* in divorce or any matrimonial cause in the Supreme Court in pursuance of the provisions of the said section 6 may continue their suits and defences as if the said section 6 had not been repealed ; and
- (b) all persons who made application to the Public Solicitor before the commencement of this section for legal assistance with respect to any divorce or matrimonial cause in the Supreme Court may submit a case for the opinion of the Public Solicitor and may be admitted to sue or defend *in forma pauperis* in those proceedings as if the said section 6 had not been repealed.

Repeal of provisions for assistance in County Court and Workers Compensation Board.

Saving as to outstanding cases and applications for legal assistance.

17. (1) Section 10 of the *Poor Persons Legal Assistance Act 1958* is hereby repealed.

(2) Notwithstanding the repeal of section 10 of the *Poor Persons Legal Assistance Act 1958* and without in any way derogating from the provisions of Part II.—

- (a) all persons admitted before the commencement of this section to sue or defend *in forma pauperis* in any civil proceedings in the County Court or in any proceeding matter or enquiry before the Workers Compensation Board for or in respect of any claim for compensation under the *Workers Compensation Act 1958* may continue their suits and defences as if the said section 10 had not been repealed ; and
- (b) all persons who made application to the Public Solicitor before the commencement of this section for legal assistance with respect to any civil proceeding in the County Court or any proceeding matter or enquiry with respect to any claim for compensation under the *Workers Compensation Act 1958* may submit a case for the opinion of the Public Solicitor and may be admitted to sue or defend *in forma pauperis* in those proceedings as if the said section 10 had not been repealed.

Repeal of remainder of *Poor Persons Legal Assistance Act 1958*.

18. So much of the *Poor Persons Legal Assistance Act 1958* as remains unrepealed is hereby repealed.

19. After

19. After sub-section (5) of section 3 of the *Appeal Costs Fund Act 1964* there shall be inserted the following sub-sections :—

“(6) During the month of April, 1970, and the month of April in each year thereafter the Board shall calculate the amount of the total liability of the Fund on all applications held by the Board on the 31st day of March last preceding and during the month of October, 1970, and the month of October in each year thereafter the Board shall calculate the amount of the total liability of the Fund on all applications held by the Board on the 30th day of September last preceding.

(7) Where the moneys in the Fund, excluding the amount so calculated on any occasion, exceeds \$100,000 the Board shall issue its certificate for the payment from the Fund to the Legal Aid Fund established pursuant to the provisions of the *Legal Aid Act 1969* of so much of the money in the Appeal Costs Fund, excluding any amount calculated under sub-section (1), as exceeds \$100,000.”

20. For the purposes of this Act the provisions of Part II. of the *Poor Persons Legal Assistance Act 1958* as in force immediately before the commencement of the several provisions of this Act shall be subject to the modifications that the Governor in Council may by Order published in the *Government Gazette* declare that the Public Solicitor shall cease to render assistance to persons stated in the Order from a day specified in the Order and may by the Order assign any other solicitor to assist any such person in the stead of the Public Solicitor and any reference in the provisions of the said Part II. to the Public Solicitor shall, where another solicitor has been so assigned, be read and construed as a reference to that other solicitor.

21. Any person who in or in connexion with any application for legal assistance under this Act knowingly makes any false statement or supplies any information he knows to be false shall be guilty of an offence against this Act.

Penalty : \$500 or imprisonment for six months.

22. (1) Where an assisted person is convicted for an offence against section 21 with respect to his means the court convicting him may order him to pay to the Treasurer of Victoria for payment to the Legal Aid Fund established under this Act a sum equal to the expenses incurred under this Act on his behalf less, in the case of a person assisted under Part II., any moneys paid by the assisted person or recovered by the Legal Aid Committee for or towards such expenses.

Amendment of
No. 7117 s. 3.

Board to
calculate total
liability of
Fund from
time to time.

Surplus over
\$100,000 to be
paid to Legal
Aid Fund.

Governor in
Council may by
Order re-assign
cases.

Offence to
make false
statement in
application for
assistance.

Person making
false statement
may be ordered
to repay moneys
expended.

(2) Any sum ordered under this section to be paid by the assisted person shall be deemed in all respects to be a judgment for a civil debt at the suit of the Treasurer of Victoria and may be entered for the purposes of execution in any court of competent jurisdiction.

Regulations. 23. The Governor in Council may make regulations for or with respect to—

- (a) disseminating information to the public concerning the provisions of this Act ;
- (b) prescribing forms to be used and procedures to be followed under this Act ; and
- (c) generally all matters authorized or required to be prescribed for carrying into effect the provisions of this Act.