

**LEGAL ASSISTANCE AND SUITORS' FUND
(AMENDMENT) ACT.**

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 10, 1970.

An Act to make further provision with respect to the payment of costs in certain litigation and the liability of certain persons for those costs; for these and other purposes to amend the Legal Assistance Act, 1943, and the Suitors' Fund Act, 1951; and for purposes connected therewith. [Assented to, 23rd March, 1970.]

BE

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970 **BE** it enacted by the Queen'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. 1. This Act may be cited as the "Legal Assistance and Suitors' Fund (Amendment) Act, 1970".

Amendment of Act No. 17, 1943. 2. The Legal Assistance Act, 1943, is amended—

Sec. 2. (Definitions.) (a) by inserting at the end of section two the following new definition:—

"Suitors' Fund" means the Suitors' Fund established under the Suitors' Fund Act, 1951.

Sec. 3. (Public Solicitor.) (b) by omitting paragraph (d) of subsection six of section three and by inserting in lieu thereof the following paragraph:—

(d) becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;

Sec. 8. (Endorsement and filing of certificate.) (c) by omitting from subsection six of section eight the words "an assisted person" and by inserting in lieu thereof the words "any other person whomsoever";

Sec. 12. (Privileges attaching to certain relationships.) (d) by omitting subsection two of section twelve;

Sec. 14. (Costs.) (e) (i) by omitting from subsection one of section fourteen the words "(except against another assisted person)" wherever occurring;

(ii)

Legal Assistance and Suitors' Fund (Amendment).

- (ii) by inserting at the end of the same subsection No. 10, 1970 the following words :—

The foregoing provisions of this subsection have effect in relation to an assisted person notwithstanding that any other party to the proceedings is also an assisted person.

- (iii) by omitting from paragraph (a) of subsection (1A) of the same section the words “(except in favour of another assisted person)”;
- (iv) by omitting from the same paragraph the words “(except where that other party is an assisted person)”;
- (v) by inserting at the end of the same paragraph the following words :—

The foregoing provisions of this paragraph have effect in relation to the assisted person notwithstanding that any other party to the proceedings is also an assisted person.

- (vi) by omitting from paragraph (b) of the same subsection the words “established under the Suitors' Fund Act, 1951, as amended by subsequent Acts.”;
- (vii) by omitting from the same paragraph the words “, and the assisted person shall not be liable for the payment thereof”;
- (viii) by inserting next after the same paragraph the following new paragraphs :—

(b1) The provisions of paragraph (b) of this subsection shall not apply to or in respect of costs in excess of three thousand dollars, or such other amount as may be fixed (at the time when the certificate was granted under section six of this Act to the assisted person against whom the order for costs was made or against whom the costs were adjudged) in lieu thereof by the regulations, if those costs

were

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

were incurred after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970.

(b2) An assisted person against whom an order for costs is made or against whom costs are adjudged as referred to in paragraph (a) of this subsection shall, whether or not all of those costs are payable from the Suitors' Fund pursuant to paragraph (b) of this subsection, not be liable for the payment thereof.

(b3) The provisions of paragraphs (b) and (b2) of this subsection shall not be construed as applying to or in respect of costs in proceedings under the Matrimonial Causes Act 1959 as subsequently amended of the Commonwealth, if those proceedings were commenced after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970.

(b4) Notwithstanding the provisions of paragraph (b) of this subsection—

(i) where—

- (a) a court has, before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970, made or after that commencement makes a decision to award moneys to an assisted person;
- (b) the assisted person institutes an appeal against that decision;
- (c) the ground or one of the grounds of the appeal is that the moneys so awarded are inadequate;

(d)

Legal Assistance and Suitors' Fund (Amendment).

- (d) the result of the appeal is that No. 10, 1970 the decision appealed against is not affected in so far as it relates to the award of those moneys;
- (e) an order for costs is made against the assisted person, or costs are adjudged against him, as referred to in paragraph (a) of this subsection; and
- (f) the moneys referred to in paragraph (d) of this sub-paragraph have been paid to the assisted person; or

(ii) where—

- (a) after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970, an assisted person commences an action against two or more persons;
- (b) judgment is entered in that action in favour of the assisted person against one or more but not all of those persons; and
- (c) an order for costs is made against the assisted person, or costs are adjudged against him, as referred to in paragraph (a) of this subsection, in favour of one or more of those persons,

the said Under Secretary may, if in the circumstances of the case he thinks it is proper to do so, direct that the whole of those costs, or such part thereof as he specifies, shall not be payable from the Suitors' Fund, and those

costs

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

costs or that part shall not be so payable and the assisted person shall be liable for the payment thereof.

In this paragraph "appeal" includes proceeding in the nature of an appeal.

- (ix) by omitting from paragraph (c) of the same subsection the words "Fund referred to in paragraph (b) of this subsection" and by inserting in lieu thereof the words "Suitors' Fund";
- (x) by omitting from the same paragraph the words "that Fund" and by inserting in lieu thereof the words "the Suitors' Fund";
- (xi) by omitting from subsection three of the same section the words "moneys are" and by inserting in lieu thereof the words "prescribed property is";
- (xii) by omitting from the same subsection the words "out of the moneys so recovered,";
- (xiii) by omitting from paragraph (a) of the proviso to the same subsection the words "moneys recovered" and by inserting in lieu thereof the words "value of the prescribed property";
- (xiv) by inserting next after the same subsection the following new subsections:—

(3A) Where property is recovered by an assisted person (whether in proceedings or by virtue of a settlement or compromise), the said Under Secretary may, if he is satisfied that, having regard to the nature and value of the property or any part thereof and to such other matters as he thinks fit, it is proper to do so, issue a certificate—

- (a) stating that that property or part shall be included as prescribed property in respect of the assisted person; and

(b)

Legal Assistance and Suitors' Fund (Amendment).

- (b) specifying the value which the Public No. 10, 197
Solicitor has determined that property
or part to have.

(3B) In subsections three and (3A) of this
section—

“prescribed property”, in relation to an
assisted person, means—

- (a) any moneys which are
recovered (otherwise than in
respect of costs as referred to
in subsection two of this
section) by the assisted person;
- (b) any property which is recovered
by the assisted person and in
respect of which a certificate
has been issued under sub-
section (3A) of this section;
or
- (c) if both such moneys and
property are so recovered,
those moneys and that
property;

“value of the prescribed property” means—

- (a) the amount of moneys within
the definition of “prescribed
property” in this subsection;
- (b) the value of the property
within that definition, as speci-
fied in the certificate issued
under subsection (3A) of this
section; or
- (c) if both such moneys and pro-
perty are recovered as referred
to in paragraph (c) of that
definition, the amount of
those moneys and the value of
that property as so specified.

(3c)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

(3c) Any sum payable by an assisted person under subsection three of this section to a solicitor may be recovered by him from the assisted person as a debt in any court of competent jurisdiction.

Sec. 17.
(Appeals to
High Court
or Privy
Council.)

- (f) (i) by omitting from subsection two of section seventeen the word "he" where firstly occurring and by inserting in lieu thereof the words "and, in the case of an appeal to the Privy Council, the Attorney-General has certified that in his opinion matters affecting the public interest are or are likely to be involved in the appeal, the Public Solicitor may grant the application and either";
- (ii) by omitting from the same subsection the words "and of section nine of this Act shall" and by inserting in lieu thereof the words " , section nine and subsections two to five (inclusive) of section fourteen of this Act shall, so far as those provisions are relevant,";
- (iii) by inserting at the end of the same section the following new subsections :—

(3) Where an application by a person has been granted under this section (whether before or after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970) in respect of an appeal to the Privy Council, the Under Secretary of the Department of the Attorney-General and of Justice may pay from the Suitors' Fund such moneys, not exceeding six thousand dollars, as appear to him to be necessary, for the purpose of covering out of pocket, travelling and accommodation expenses of such persons as he thinks fit, expected to be incurred in relation to the appeal, and the firstmentioned person shall be liable to pay any moneys recovered by him in respect of those expenses to the said Under Secretary.

(4)

Legal Assistance and Suitors' Fund (Amendment).

(4) Any amount payable under subsection three of this section to the said Under Secretary may be recovered by him from the person so liable as a debt in any court of competent jurisdiction.

Any amount paid to, or recovered by, the said Under Secretary under this subsection shall be paid by him into the Suitors' Fund.

(5) Where, in an appeal to the High Court of Australia or to the Privy Council taken or contested by a person whose application under this section has been granted in respect of that appeal, an order for costs has been made, or costs have been adjudged, whether before or after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970, but not before the commencement of the Suitors' Fund (Amendment) Act, 1959, against that person, so much of those costs as have not been paid to the person in whose favour they were ordered to be paid, or to whom they were adjudged, shall, upon production to the said Under Secretary of such evidence as to the amount thereof as he may require, be paid from the Suitors' Fund to that lastmentioned person.

The provisions of this subsection shall not apply in respect of—

- (a) costs incurred before the day on which the application was granted;
- (b) costs in excess of three thousand dollars or such other amount as may be fixed (at the time when the application was granted) in lieu thereof by the regulations; or

(c)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

(c) costs in proceedings under the Matrimonial Causes Act 1959 as subsequently amended of the Commonwealth.

(6) The provisions of paragraph (c) of subsection (1A) of section fourteen of this Act shall apply mutatis mutandis to and in respect of costs paid under subsection five of this section.

Amendment
of Act No.
3, 1951.

3. (1) The Suitors' Fund Act, 1951, is amended—

Sec. 2.
(Defini-
tions.)

(a) (i) by inserting next after the definition of "Appeal" in section two the following new definition :—

"Corporation" has the meaning ascribed thereto by subsection one of section five of the Companies Act, 1961.

(ii) by omitting the definition of "Costs" in the same section and by inserting in lieu thereof the following definition :—

"Costs", when used in relation to an appeal in respect of which an indemnity certificate is granted, includes—

- (a) the costs of the application for the indemnity certificate but, except as provided by paragraph (b) of this definition, does not include costs incurred in a court of first instance;
- (b) where a new trial is ordered upon the appeal, the costs of the first trial.

(b)

Legal Assistance and Suitors' Fund (Amendment).

- (b) (i) by inserting in subsection one of section three after the word "Act" where firstly occurring the words "and any moneys required to be paid into the Suitors' Fund under the Legal Assistance Act, 1943,"; No. 10, 1970
Sec. 3.
(Suitors' Fund.)
- (ii) by omitting from the same subsection the words "of the Legal Assistance Act, 1943, as amended by subsequent Acts" and by inserting in lieu thereof the words "and in subsections three and five of section seventeen of the Legal Assistance Act, 1943";
- (iii) by omitting from subsection five of the same section the word "Colonial";
- (c) (i) by inserting next after subsection (1A) of section six the following new subsection :— Sec. 6.
(Costs of certain appeals.)
- (1B) For the purposes of this section, a taxing officer of a court shall, when acting as such a taxing officer, be deemed to be exercising the jurisdiction of a court of first instance.
- (ii) by inserting in paragraph (a) of subsection two of the same section after the words "undue hardship," the words "or where those costs or part thereof have not been paid by the respondent and the said Under Secretary is satisfied that the respondent cannot be found after such strict inquiry and search as he may require or that the respondent unreasonably refuses or neglects to pay them,";
- (iii) by omitting from the same paragraph the words "requested by the respondent" and by inserting in lieu thereof the words "requested by the appellant or the respondent";

(iv)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

(iv) by omitting from the same subsection the following words :—

(ii) the amount payable from the Fund under or pursuant to any one indemnity certificate shall not in any case exceed the sum of two thousand dollars or such other amount as may be fixed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette.

(v) by omitting from the same subsection the words "The Governor may from time to time in like manner vary or revoke any proclamation under this subsection.";

(vi) by inserting next after the same subsection the following new subsection :—

(2A) Notwithstanding the provisions of subsection two of this section, the amount payable from the Fund under or pursuant to any one indemnity certificate, being an indemnity certificate granted on or after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970, shall—

(a) where it was granted in respect of an appeal to the Supreme Court—not exceed three thousand dollars;

(b) where it was granted in respect of an appeal to the High Court of Australia from a decision of the Supreme Court—not exceed five thousand dollars;

(c) where it was granted in respect of an appeal to the Queen in Council from a decision of the High Court of

Australia

Legal Assistance and Suitors' Fund (Amendment).

Australia given in an appeal from a decision of the Supreme Court—not exceed seven thousand dollars; No. 10, 1970

- (d) where it was granted in respect of an appeal to the Queen in Council from a decision of the Supreme Court—not exceed seven thousand dollars;
- (e) where it was granted in respect of any other appeal—not exceed three thousand dollars,

or such other amount as may be fixed (at the time when the indemnity certificate is granted) in lieu of the amount referred to in paragraph (a), (b), (c), (d) or (e) of this subsection, as the case may require, by the regulations under this Act.

- (vii) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection :—

(7) An indemnity certificate shall not be granted in favour of—

- (a) the Crown;
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or
- (c) a corporation that does not have such a paid-up share capital but that, within the meaning of subsection five of section six of the Companies Act, 1961, is related to a corporation that has such a paid-up share capital, unless the appeal to which the certificate relates was instituted before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970.

(d)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

Sec. 6A.
 (Costs of proceedings not completed by reason of death of judge, &c., or for other reasons not attributable to acts, &c., of parties.)

- (d) (i) by inserting in subsection one of section 6A after the words "additional costs" the words "(in this section referred to as "additional costs")";
- (ii) by inserting in the same subsection after the words "of the costs" the words "(in this section referred to as "original costs")";
- (iii) by inserting next after subsection one of the same section the following new subsections :—

(1A) Where, in the opinion of the said Under Secretary—

(a) he would, but for this subsection, not be entitled to authorise payment of an amount to a person under subsection one of this section because that person incurred neither original costs nor additional costs by reason only of the fact that he was an assisted person; and

(b) that person would have incurred original costs and additional costs had he not been an assisted person,

subsection one of this section shall, if the said Under Secretary so directs, apply to and in respect of that person as if he had not been an assisted person and as if he had incurred such original costs and additional costs as the said Under Secretary determines :

Provided that the said Under Secretary may, in lieu of authorising payment under that subsection of an amount to that person, authorise payment of that amount to such person or persons as in his opinion is or are entitled to receive payment thereof.

In

Legal Assistance and Suitors' Fund (Amendment).

In this subsection, "assisted person" has the meaning ascribed thereto by section two of the Legal Assistance Act, 1943. No. 10, 1970

(1B) Where an application has been made by or on behalf of or in respect of a party or an accused or an appellant, referred to in subsection one of this section, the amount payable under that subsection to any one person shall, in respect of that application not exceed three thousand dollars or such other amount as may be fixed (at the time when the proceedings were rendered abortive or the new trial was ordered, as referred to in that subsection) in lieu of that amount by the regulations under this Act.

(iv) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) No amount shall be paid from the Fund under this section to—

- (a) the Crown;
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or
- (c) a corporation that does not have such a paid-up share capital but that, within the meaning of subsection five of section six of the Companies Act, 1961, is related to a corporation that has such a paid-up share capital, unless the proceedings were rendered abortive or the new trial was ordered (as referred to in subsection one of this section) before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970.

(e)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

Sec. 6B.
(Costs of
certain
appeals on
ground that
damages were
excessive or
inadequate.)

- (e) (i) by omitting from subsection one of section 6B the words "Where on or after the day on which Her Majesty's assent to the Suitors' Fund (Amendment) Act, 1959, is signified, a new trial is ordered in an action on the ground that the damages awarded in the action were excessive or inadequate, the respondent to the motion for the new trial shall be entitled to be paid from the Fund" and by inserting in lieu thereof the words "Where an appeal to the Court of Appeal on the ground that the damages awarded in the action in respect of which the appeal is made were excessive or inadequate succeeds, the respondent to the appeal or any one or more of several respondents to the appeal, shall be entitled to be paid from the Fund";
- (ii) by omitting from paragraph (a) of the same subsection the words "motion for the new trial" and by inserting in lieu thereof the word "appeal";
- (iii) by inserting in the same paragraph after the words "undue hardship," the words "or where those costs or part thereof have not been paid by the respondent and the said Under Secretary is satisfied that the respondent cannot be found after such strict inquiry and search as he may require or that the respondent unreasonably refuses or neglects to pay them,";
- (iv) by omitting from the same paragraph the words "requested by the respondent" and by inserting in lieu thereof the words "requested by the appellant or the respondent";
- (v) by omitting from paragraph (b) of the same subsection the words "order for the new trial is made" and by inserting in lieu thereof the words "decision in the appeal is given";

(vi)

Legal Assistance and Suitors' Fund (Amendment).

- (vi) by omitting from the same paragraph the words "motion for the new trial" wherever occurring and by inserting in lieu thereof the word "appeal";
- (vii) by omitting from paragraph (ii) of the same subsection the words "motion for a new trial" and by inserting in lieu thereof the word "appeal";
- (viii) by omitting from the same paragraph the word "two" and by inserting in lieu thereof the word "three";
- (ix) by omitting from the same paragraph the words "order for the new trial is made" and by inserting in lieu thereof the words "decision in the appeal is given";
- (x) by omitting from the same paragraph the words "Governor by proclamation published in the Gazette" and by inserting in lieu thereof the words "regulations under this Act";
- (xi) by omitting from the same subsection the words "The Governor may from time to time in like manner vary or revoke any proclamation under this section.";
- (xii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) Subsection one of this section does not apply where the respondent to the appeal is—

- (a) the Crown;
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or

(c)

Legal Assistance and Suitors' Fund (Amendment).

No. 10, 1970

(c) a corporation that does not have such a paid-up share capital but that, within the meaning of subsection five of section six of the Companies Act, 1961, is related to a corporation that has such a paid-up share capital, unless the appeal was instituted before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1970.

(2) The amendments made by subparagraphs (ii) and (iii) of paragraph (c) of subsection one of this section shall be deemed to have commenced upon the first day of November, one thousand nine hundred and fifty-one.

(3) So much of the provisions of subsection two of section six of the Suitors' Fund Act, 1951, as are repealed by subparagraph (iv) of paragraph (c) of subsection one of this section and any proclamation under the said subsection two shall continue to apply in respect of any indemnity certificate granted before the commencement of this Act in the same manner as if those provisions had not been repealed by that subparagraph.

(4) The amendments made by subparagraphs (i), (ii), (v), (vi), (vii) and (ix) of paragraph (e) of subsection one of this section shall be deemed to have commenced upon the day on which Part VI of the Law Reform (Miscellaneous Provisions) Act, 1965, commenced.

(5) Subsection one of section 6B of the Suitors' Fund Act, 1951, shall continue to apply in respect of the costs in a motion for a new trial ordered on or after the day on which Her Majesty's assent to the Suitors' Fund (Amendment) Act, 1959, was signified and before the day on which Part VI of the Law Reform (Miscellaneous Provisions) Act, 1965, commenced in the same manner as if the amendments referred to in subsection four of this section had not been made.

(6)

Legal Assistance and Suitors' Fund (Amendment).

(6) The amendments made by subparagraphs (iii) and (iv) of paragraph (e) of subsection one of this section shall be deemed to have commenced upon the nineteenth day of October, one thousand nine hundred and fifty-nine. No. 10, 1970

(7) The provisions of paragraph (ii) of subsection one of section 6B of the Suitors' Fund Act, 1951, and any proclamation under that subsection shall continue to apply in respect of any amount payable from the Fund in respect of an order for a new trial made or a decision in an appeal given before the commencement of this Act in the same manner as if the amendments made by subparagraphs (viii) and (x) of paragraph (e) of subsection one of this section had not been made.