

**POOR PERSONS LEGAL ASSISTANCE.**

19° GEO. V., No. XLIII.

No. 43 of 1928.

**AN ACT to make provision for granting Legal Assistance to Poor Persons.**

[Assented to 28th December, 1928.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Poor Persons Legal Assistance Act, 1928.* Short title

2. For the purposes of this Act—

“Committee” shall mean a Committee of the Law Society of Western Australia; Interpretation

“Minister” means the Attorney General or, in case of a vacancy in that office, the Minister for Justice, and includes any other Minister of the Crown performing the functions of the Attorney General or the Minister for Justice;

“Poor person” means any person who proves that he is not worth £50 (excluding his wearing apparel and tools of trade, and, in a civil proceeding, the subject matter of such proceeding), and if such poor person is married then he or she and his or her wife or husband as the case may be are not together worth said sum of £50 and that such poor person has not earned the basic wage determined and declared under the provisions of the Industrial Arbitration Act, 1912-1925, during the previous twelve months; and also any other person who proves that special circumstances incidental to his case necessitate legal attention which his means do not enable him to obtain.

“Practitioner,” unless repugnant to the context, means a qualified legal practitioner of the Supreme Court whose name appears in the list of practitioners kept for the purposes of this Act;

“Prescribed” means prescribed by rules or regulations made under this Act;

“Public Solicitor” means the Public Solicitor appointed under this Act;

“Regulation” means a regulation made under this Act.

“Society” shall mean the Law Society of Western Australia.

Appointment of Public Solicitor. Vic. 3548, s. 5. S.A., 1689, s. 7.

3. The Governor may appoint the Law Society of Western Australia or a committee of the society (if willing to act), such committee to be approved by the Chief Justice of the Supreme Court of Western Australia for the purpose of carrying out all or any objects or purposes of this Act and failing the said society or committee being willing to act the Governor may appoint a qualified legal practitioner of the Supreme Court to be the Public Solicitor, and such appointment may be made under the provisions of the Public Service Act, 1904, or from time to time by an agreement in writing, upon such terms and conditions as the Minister shall recommend.

List of practitioners willing to assist poor persons. N.S.W. P.P. Rules, 1927, R. 3.

4. The Minister shall keep a list of qualified legal practitioners of the Supreme Court willing to inquire into and report upon the applications of poor persons for legal assistance under this Act, and to act on behalf of such poor persons for the fee or remuneration and subject to the conditions prescribed.

Legal aid for persons accused of indictable offences. N.S.W., 23 of 1927, s. 2. Vic. 2831, s. 2. S.A., 1689, s. 3.

5. (1.) Any person committed for trial for an indictable offence against the laws of Western Australia may at any time within fourteen days after the committal and before the jury is sworn for the trial of such offence, lodge with the Minister an application in the prescribed form for legal assistance under this Act, accompanied by a statutory declaration made by the applicant verifying the statements of fact contained in the application.

(2.) The Minister shall refer the application to the Society or Committee and failing them to the Public Solicitor, or a practitioner if the Public Solicitor has not been appointed or if the Public Solicitor is absent or otherwise unable to deal with the same.

(3.) The Society or Committee or the Public Solicitor or practitioner shall consider the application, and if he is satisfied that the applicant is a poor person and deserving of legal assistance under this Act, he shall lodge with the Minister a certificate in the prescribed form, and the Minister may assign the Public Solicitor or practitioner, or, if they are unable to act, any other practitioner for the defence of the applicant at the trial of the said offence.

(4.) If two or more persons are committed for trial jointly for an indictable offence, and make application for legal assistance in accordance with the foregoing provisions, and the Society or Committee or Public Solicitor or practitioner to whom the applications are referred is of the opinion that each of them should be defended separately, the Minister may assign separate practitioners for the defence of each of them, but the Public Solicitor shall be one of them unless he is unable to act.

6. (1.) Subject to the provisions of this Act the right of suing or defending *in forma pauperis* in the Supreme Court pursuant to the Rules of the Supreme Court is hereby extended to poor persons under this Act.

Legal aid for persons  
in civil actions and  
matrimonial causes.  
Vic., 3548, s. 2.  
S.A., 1689, s. 4.

(2.) Subject to the provisions of this Act the right of prosecuting or defending a suit in divorce and matrimonial causes *in forma pauperis* pursuant to the Rules of the Supreme Court relating to such suits is hereby extended to poor persons under this Act.

Vic., 3548, s. 3.  
S.A., 1689, s. 5.

(3.) The provisions of this Act and the Rules and practice of the Supreme Court relating to civil proceedings by or against paupers, as amended or affected by this Act shall so far as applicable extend and apply to civil proceedings in any Local Court and to proceedings for or in respect of claims for compensation under the Workers' Compensation Act, and for the purposes of this subsection any reference to a Judge in this Act or in the said rules shall be deemed to include a reference to a Magistrate of the Local Court.

Vic., 3548 s. 8.

(4.) Every reference in this Act to any rules or rules of Court shall include a reference to any rules or rules of Court made in addition to or in substitution for the said rules or rules of Court.

S.A., 1689, s. 2.

(5.) Nothing in this Act shall affect the powers of the Judges or of any of them to make, alter or revoke any rules of Court relating to proceedings *in forma pauperis*: Provided that nothing in any rules of Court so made, altered or revoked shall be inconsistent with any provision of this Act, and that

*Ibid.*, s. 9.

where any existing rules or rules of Court are inconsistent with any provision of this Act, such provision shall prevail.

Application for  
legal aid.

7. (1.) Any person desirous of receiving legal assistance under section six shall lodge with the Minister an application in the prescribed form accompanied by a statement of his case for opinion of Counsel, and a statutory declaration made by the applicant verifying the statements of fact contained in the application.

(2.) The Minister shall refer the application and the case for opinion of Counsel to the Society or Committee if acting hereunder or to the Public Solicitor or a practitioner if the Public Solicitor be not available, for consideration and inquiry; and if satisfied that the applicant is a poor person and deserving of legal assistance under this Act, and that the case of the applicant is such that he should have legal assistance, there shall be lodged with the Minister a certificate in the prescribed form, and the Minister may assign the Public Solicitor or practitioner, or, if they are not available, another practitioner to assist the applicant.

(3.) The Public Solicitor or practitioner so assigned shall apply to a Judge in accordance with the appropriate rules of Court for an order that the applicant may be admitted to sue or defend *in forma pauperis*, and upon the applicant being so admitted the Public Solicitor or practitioner, or, if they are unable to act, another practitioner approved by the Minister, shall act for and conduct the case of the applicant until the same is finally disposed of.

Legal aid for persons  
defending a cause  
or action where the  
person suing re-  
ceives legal aid.  
Vic., 3548, s. 6.

8. If in any proceeding a person has been admitted to sue as a poor person and receives legal assistance under this Act, and the opposite party is desirous of defending as a poor person and of receiving legal assistance under this Act, the provisions of this Act shall apply to both parties except that the application and case for opinion of Counsel of the opposite party shall be referred to a practitioner other than the Public Solicitor or practitioner assigned for the person suing, and such other practitioner or, if he be not available, another practitioner, shall act for and conduct the case of the opposite party until the same is finally disposed of.

This Act to apply  
to appeals.

9. The provisions of this Act shall apply to appeals and proceedings in the nature of appeals from decisions of the Supreme Court or any inferior court: Provided that if any party to an appeal was represented by a practitioner assigned under this Act in the original proceeding, such practitioner shall not, except with the approval of the Minister, deal with

the application of such party for legal assistance in relation to the appeal or be assigned for such party for the purposes thereof.

10. All costs which but for this Act would be payable to a poor person receiving legal assistance under this Act shall be a debt due to the Crown recoverable at the suit of the Crown Solicitor and shall be paid into the consolidated revenue.

Costs otherwise payable to poor person to be debt due to Crown. Vic., 3548, s. 7.

11. If in any proceeding a poor person receiving legal assistance under this Act recovers more than Fifty pounds, such person shall be liable to pay to the Crown the taxed costs of the Public Solicitor or practitioner assigned for such person in excess of the costs recoverable from the opposite party, and the same shall be recoverable as a debt due to the Crown at the suit of the Crown Solicitor, and shall be a first charge on the amount recovered, and shall be paid into the consolidated revenue: Provided that in no case shall a poor person be liable under this section to pay more than one fourth of the amount recovered in the proceeding.

If amount recovered exceeds £50 Crown to be entitled to payment of costs as between solicitor and client.

N.S.W., D.C. (P.P.) Rules, 1919, R. 55 (d).

12. Should the Public Solicitor or practitioner acting for a poor person discover at any time that the poor person or the wife or husband, as the case may be, of the poor person is possessed of means beyond £50 he shall at once report the matter to the Minister, who may withdraw and cancel any leave given to proceed under this Act and take such action thereon as he may think proper.

Withdrawal of leave on evidence of means.

13. The moneys required for the purposes of this Act, including the fees or remuneration of the Public Solicitor under an agreement where he is not appointed under the provisions of the Public Service Act, 1904, and the prescribed fees or remuneration of practitioners, and the expenses of witnesses on behalf of poor persons when the Public Solicitor or practitioner assigned certifies that the evidence of such witnesses was necessary, and any costs which an unsuccessful poor person receiving legal assistance under this Act is liable to pay to the opposite party shall, subject to the regulations, be paid out of moneys provided by Parliament for those purposes.

Financial provisions S.A. 1689, s. 3.

14. The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed or which it may be necessary or convenient to prescribe for giving effect to this Act.

Regulations.