

No. , 1969.

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## A BILL

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.

[MR McCaw—19 *November*, 1969.]

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BE

*Legal Assistance and Suitors' Fund (Amendment).*

**B**E 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:—

1. This Act may be cited as the "Legal Assistance and Suitors' Fund (Amendment) Act, 1969". Short title.
2. The Legal Assistance Act, 1943, is amended— Amendment of Act No. 17, 1943.
- (a) by inserting at the end of section two the following new definition :— Sec. 2. (Definitions.)
- "Suitors' Fund" means the Suitors' Fund established under the Suitors' Fund Act, 1951.
- (b) by omitting paragraph (d) of subsection six of section three and by inserting in lieu thereof the following paragraph :— Sec. 3. (Public Solicitor.)
- (d) becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
- (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. 8. (Endorsement and filing of certificate.)
- (d) by omitting subsection two of section twelve; Sec. 12. (Privileges attaching to certain relationships.)
- (e) (i) by omitting from subsection one of section fourteen the words "(except against another assisted person)" wherever occurring; Sec. 14. (Costs.)

(ii)

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*Legal Assistance and Suitors' Fund (Amendment).*

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- (ii) by inserting at the end of the same subsection the following words :—

5           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)”;
- 10          (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 :—

15           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,”;
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- (vii) by omitting from the same paragraph the words “, and the assisted person shall not be liable for the payment thereof”;
- 25
- (viii) by inserting next after the same paragraph the following new paragraphs :—

30           (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

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were

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were incurred after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969.

5 (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.

10 (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, 1969.

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

(i) where—

25 (a) a court has, before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969, made or after that commencement makes a decision to award moneys to an assisted person;

30 (b) the assisted person institutes an appeal against that decision;

35 (c) the ground or one of the grounds of the appeal is that the moneys so awarded are inadequate;

(d)

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- 5 (d) the result of the appeal is that the decision appealed against is not affected in so far as it relates to the award of those moneys;
- 10 (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

15 (ii) where—

- 20 (a) after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969, an assisted person commences an action against two or more persons;
- 25 (b) judgment is entered in that action in favour of the assisted person against one or more but not all of those persons; and
- 30 (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,

35 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

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

5 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";

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(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";

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(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";

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

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(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—

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

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(b)

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(b) specifying the value which the Public Solicitor has determined that property or part to have.

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

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

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(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;

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(b) any property which is recovered by the assisted person and in respect of which a certificate has been issued under subsection (3A) of this section; or

20

(c) if both such moneys and property are so recovered, those moneys and that property;

“value of the prescribed property” means—

25

(a) the amount of moneys within the definition of “prescribed property” in this subsection;

30

(b) the value of the property within that definition, as specified in the certificate issued under subsection (3A) of this section; or

35

(c) if both such moneys and property 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)

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(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.

(f) (i) by omitting from subsection two of section Sec. 17. seventeen the word "he" where firstly occurring and by inserting in lieu thereof the words (Appeals to High Court or Privy Council.) "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, 1969) 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)



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*Legal Assistance and Suitors' Fund (Amendment).*

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5 (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.

10 (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  
15 or after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969, 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  
20 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—

- 30 (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
- 35

(c)

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*Legal Assistance and Suitors' Fund (Amendment).*

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

5 (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.

10 3. (1) The Suitors' Fund Act, 1951, is amended— Amendment  
of Act No.  
3, 1951.

(a) (i) by inserting next after the definition of "Appeal" in section two the following new definition :— Sec. 2.  
(Definitions.)

15 "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 :—

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

25 (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;

30 (b) where a new trial is ordered upon the appeal, the costs of the first trial.

(b)

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- 5 (b) (i) by inserting in subsection one of section three Sec. 3.  
after the word "Act" where firstly occurring (Suitors'  
the words "and any moneys required to be Fund.)  
paid into the Suitors' Fund under the Legal  
Assistance Act, 1943,";
- 10 (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";
- 15 (c) (i) by inserting next after subsection (1A) of Sec. 6.  
section six the following new subsection :— (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 exercis-  
ing the jurisdiction of a court of first instance.
- 20 (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  
25 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,";
- 30 (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)

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*Legal Assistance and Suitors' Fund (Amendment).*

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

5 (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  
10 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." ;  
15

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

20 (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  
25 Suitors' Fund (Amendment) Act, 1969, shall—

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

30 (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;

35 (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;

- 5 (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;
- 10 (e) where it was granted in respect of any other appeal—not exceed three thousand dollars.

15 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 :—

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

- (a) the Crown;
- 25 (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or
- 30 (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, 1969.
- 35

(d)

*Legal Assistance and Suitors' Fund (Amendment).*

- (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 : —

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.)

(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

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*Legal Assistance and Suitors' Fund (Amendment).*

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In this subsection, "assisted person" has the meaning ascribed thereto by section two of the Legal Assistance Act, 1943.

5 (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  
10 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  
15 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 : —

20 (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
- 25 (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  
30 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  
35 the Legal Assistance and Suitors' Fund  
(Amendment) Act, 1969.

(e)

*Legal Assistance and Suitors' Fund (Amendment).*

- (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)

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



*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";
- 5 (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";
- 10 (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";
- 15 (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";
- 20 (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.";
- 25 (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—
- 30 (a) the Crown;
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or

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*Legal Assistance and Suitors' Fund (Amendment).*

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5 (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,  
10 1969.

(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.

15 (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  
20 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  
25 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  
30 in a motion for a new trial ordered on or after the day on  
which Her Majesty's assent to the Suitors' Fund (Amend-  
ment) 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  
35 referred to in subsection four of this section had not been  
made.

(6)

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*Legal Assistance and Suitors' Fund (Amendment).*

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(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.

5 (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  
10 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.

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BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1969  
[20c]



**LEGAL ASSISTANCE AND SUITORS' FUND (AMENDMENT)  
BILL, 1969**

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**EXPLANATORY NOTE**

THE objects of this Bill are—

- (a) to amend the Legal Assistance Act, 1943—
- (i) to enable costs to be awarded where both parties to an action are assisted persons;
  - (ii) to limit the circumstances in which a barrister or solicitor acting under the Act may take or seek any reward in respect of an assisted person;
  - (iii) to limit to \$3,000 the amount of costs payable from the Suitors' Fund in respect of an assisted person;
  - (iv) to provide that costs against a person incurred before he became an assisted person are not payable from the Suitors' Fund;
  - (v) to enable the Under Secretary, if he thinks it proper to do so, to direct that an assisted person is to be personally liable for the payment of costs if the assisted person fails in an appeal in which the ground of appeal was the inadequacy of damages or if the assisted person succeeds against some but not all of the defendants;
  - (vi) to provide that costs in proceedings under the Matrimonial Causes Act 1959 of the Commonwealth awarded against an assisted person are not payable from the Suitors' Fund;
  - (vii) to require that some solicitor-client costs be paid in certain circumstances where property (as distinct from money) is recovered by an assisted person;
  - (viii) to require the Attorney-General's certificate before legal assistance is given under the Act for appeals to the Privy Council;
  - (ix) to provide for the payment from the Suitors' Fund of costs, not exceeding \$3,000, where those costs are awarded against a person receiving legal assistance under the Act in an appeal to the High Court or the Privy Council; and
  - (x) to authorise the payment from the Suitors' Fund of moneys to cover out of pocket, travelling and accommodation expenses in respect of an appeal to the Privy Council and to require the repayment thereof if moneys are recovered, in respect of those expenses, in the appeal;
- (b) to amend the Suitors' Fund Act, 1951—
- (i) to provide that the respondent to a successful appeal against the decision of a taxing officer of a court is entitled to apply for an indemnity certificate under the Act;

- (ii) to facilitate the payment to the appellant of the costs of a successful appeal where the respondent cannot be found or refuses to pay the costs and the respondent would have been entitled to receive from the Suitors' Fund an amount equal to those costs;
  - (iii) to provide that, in addition to the maximum of \$3,000 payable under the Act from the Suitors' Fund in respect of proceedings in Courts of this State, a maximum of \$5,000 be payable in respect of appeals to the High Court and \$7,000 in respect of appeals to the Privy Council;
  - (iv) to exclude payments from the Suitors' Fund not only to a corporation having a paid-up share capital of \$200,000, but also a corporation that is related to such a corporation; and
  - (v) to provide that an assisted person under the Legal Assistance Act, 1943, is eligible for payments under section 6A of the Suitors' Fund Act, 1951, where additional expenses are incurred in certain circumstances; and
- (c) to make other amendments of a minor, consequential or ancillary nature.

PROOF

No. , 1969.

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## A BILL

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.

[MR McCaw—19 November, 1969.]

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1. This Act may be cited as the "Legal Assistance and Suitors' Fund (Amendment) Act, 1969". Short title.
  
2. The Legal Assistance Act, 1943, is amended— Amendment of Act No. 17, 1943.
  - (a) by inserting at the end of section two the following new definition :— Sec. 2. (Definitions.)

"Suitors' Fund" means the Suitors' Fund established under the Suitors' Fund Act, 1951.
  - (b) by omitting paragraph (d) of subsection six of section three and by inserting in lieu thereof the following paragraph :— Sec. 3. (Public Solicitor.)

(d) becomes a mentally ill person, a protected person or an incapable person within the meaning of the Mental Health Act, 1958;
  - (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. 8. (Endorsement and filing of certificate.)
  - (d) by omitting subsection two of section twelve; Sec. 12. (Privileges attaching to certain relationships.)
  - (e) (i) by omitting from subsection one of section fourteen the words "(except against another assisted person)" wherever occurring; Sec. 14. (Costs.)

(ii)





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*Legal Assistance and Suitors' Fund (Amendment).*

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were incurred after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969.

5 (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.

10 (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, 1969.

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

(i) where—

25 (a) a court has, before the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969, made or after that commencement makes a decision to award moneys to an assisted person;

30 (b) the assisted person institutes an appeal against that decision;

35 (c) the ground or one of the grounds of the appeal is that the moneys so awarded are inadequate;

(d)

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*Legal Assistance and Suitors' Fund (Amendment).*

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- 5 (d) the result of the appeal is that  
the decision appealed against is  
not affected in so far as it  
relates to the award of those  
moneys ;
- 10 (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
- 15 (ii) where—
- (a) after the commencement of the  
Legal Assistance and Suitors'  
Fund (Amendment) Act, 1969,  
20 an assisted person commences  
an action against two or more  
persons ;
- 25 (b) judgment is entered in that  
action in favour of the assisted  
person against one or more but  
not all of those persons ; and
- 30 (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,
- 35 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

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

5 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";

10 (x) by omitting from the same paragraph the words "that Fund" and by inserting in lieu thereof the words "the Suitors' Fund";

15 (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,";

20 (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";

25 (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—

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

(b)

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(b) specifying the value which the Public Solicitor has determined that property or part to have.

5 (3B) In subsections three and (3A) of this section—

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

- 10 (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;
- 15 (b) any property which is recovered by the assisted person and in respect of which a certificate has been issued under subsection (3A) of this section;
- 20 (c) if both such moneys and property are so recovered, those moneys and that property;

“value of the prescribed property” means—

- 25 (a) the amount of moneys within the definition of “prescribed property” in this subsection;
- 30 (b) the value of the property within that definition, as specified in the certificate issued under subsection (3A) of this section; or
- 35 (c) if both such moneys and property 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).*

(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.

5

(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";

10

15

(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,";

20

(iii) by inserting at the end of the same section the following new subsections :—

25

30

35

(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, 1969) 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)

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*Legal Assistance and Suitors' Fund (Amendment).*

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5 (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.

10 (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  
15 or after the commencement of the Legal Assistance and Suitors' Fund (Amendment) Act, 1969, 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  
20 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  
25 he may require, be paid from the Suitors' Fund to that lastmentioned person.

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

- 30 (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  
35 the regulations; or

(c)

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

5 (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.

10 3. (1) The Suitors' Fund Act, 1951, is amended—

Amendment  
of Act No.  
3, 1951.

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

Sec. 2.  
(Definitions.)

15 "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 :—

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

25 (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;

30 (b) where a new trial is ordered upon the appeal, the costs of the first trial.

(b)



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- 5 (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,";
- 10 (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";
- 15 (c) (i) by inserting next after subsection (1A) of section six the following new subsection :—
- (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.
- 20 (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,";
- 25 (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)

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*Legal Assistance and Suitors' Fund (Amendment).*

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- (iv) by omitting from the same subsection the following words :—
- 5                   (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.
- 10
- (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.";
- 15
- (vi) by inserting next after the same subsection the following new subsection :—
- 20                   (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, 1969,
- 25                   shall—
- (a) where it was granted in respect of an appeal to the Supreme Court—not exceed three thousand dollars;
- 30                   (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;
- 35                   (c) where it was granted in respect of an appeal to the Queen in Council from a decision of the High Court of
- Australia

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*Legal Assistance and Suitors' Fund (Amendment).*

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Australia given in an appeal from a decision of the Supreme Court—not exceed seven thousand dollars;

5 (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;

10 (e) where it was granted in respect of any other appeal—not exceed three thousand dollars,

15 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 :—

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

(a) the Crown;

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

30 (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, 1969.

(d)

*Legal Assistance and Suitors' Fund (Amendment).*

- (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 : —

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.)

(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

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*Legal Assistance and Suitors' Fund (Amendment).*

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In this subsection, "assisted person" has the meaning ascribed thereto by section two of the Legal Assistance Act, 1943.

5 (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  
10 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  
15 regulations under this Act.

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

20 (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

25 (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  
30 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  
35 (Amendment) Act, 1969.

(e)

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*Legal Assistance and Suitors' Fund (Amendment).*

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- 5 (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";
- 10
- 15
- 20 (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";
- 25 (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,";
- 30
- (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";
- 35 (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)

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*Legal Assistance and Suitors' Fund (Amendment).*

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- (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";
- 5 (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";
- 10 (viii) by omitting from the same paragraph the word "two" and by inserting in lieu thereof the word "three";
- 15 (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";
- 20 (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.";
- 25 (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—
- 30 (a) the Crown;
- (b) a corporation that has a paid-up share capital of two hundred thousand dollars or more; or

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*Legal Assistance and Suitors' Fund (Amendment).*

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5 (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,  
10 1969.

(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.

15 (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  
20 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  
25 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  
30 in a motion for a new trial ordered on or after the day on  
which Her Majesty's assent to the Suitors' Fund (Amend-  
ment) 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  
35 referred to in subsection four of this section had not been  
made.

(6)



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*Legal Assistance and Suitors' Fund (Amendment).*

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(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.

5 (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  
10 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.

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BY AUTHORITY:

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