

Queensland



ANNO VICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 3 of 1974

An Act to consolidate and amend the law with respect to the provision of legal aid in criminal and certain other proceedings to persons of limited means and resources, and for purposes connected therewith

[ASSENTED TO 2ND APRIL, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. **Short title.** This Act may be cited as the *Public Defence Act 1974*.
2. **Commencement.** This Act shall commence on a date appointed by Proclamation.

3. Repeals and savings. (1) The following enactments (in this section referred to as the "repealed enactments") are repealed:—

- (a) *The Poor Prisoners' Defence Act of 1907*;
- (b) section 671c of *The Criminal Code*;
- (c) section 19 (2A) of the *Legal Assistance Act 1965–1971*.

(2) All applications for legal aid pursuant to the repealed enactments made prior to the date of commencement of this Act and pending at that date may be continued and completed as if this Act had not been passed.

4. Interpretation. In this Act, unless a contrary intention appears—

"Minister" means the Minister for Justice and Attorney-General or other Minister of the Crown who, at the material time, is charged with the administration of this Act: the term includes any Minister of the Crown who is temporarily performing the duties of the Minister;

"Under Secretary" means the Under Secretary of the Department of Justice: the term includes a person who, at the material time, is temporarily performing the duties of the Under Secretary.

5. Appointment of Public Defender and assistants. (1) The Governor in Council, from time to time—

- (a) may appoint a barrister or solicitor of the Supreme Court to be the Public Defender;
- (b) may appoint such barristers and solicitors of the Supreme Court and other persons as he considers necessary to assist the Public Defender.

(2) Every appointment under subsection (1) shall be made and every appointee shall hold his appointment subject to and in accordance with the *Public Service Act 1922–1973*.

(3) A person who at the commencement of this Act holds the appointment of Public Defender or an appointment to assist the Public Defender shall be deemed to have been appointed for the purposes of this Act and shall continue to hold the appointment until he vacates it or is lawfully removed therefrom.

6. Functions of Public Defender. (1) The Public Defender shall, subject to this Act, render to any person legal aid in connexion with—

- (a) criminal proceedings before any court or tribunal except a Magistrates Court and a Children's Court exercising jurisdiction other than that conferred by section 29 of the *Children's Services Act 1965–1973*;
- (b) committal proceedings before justices where that person is charged with an indictable offence punishable upon conviction by imprisonment for a term exceeding 14 years;
- (c) such other proceedings, not being civil proceedings, as the Minister directs.

(2) The Public Defender shall perform such other duties, whether or not of a legal nature, as the Minister directs.

(3) For the purpose of discharging his functions under this Act, the Public Defender may brief and instruct any practising barrister or solicitor.

7. Right to act as barrister and solicitor. For the purposes of this Act the Public Defender and a barrister or solicitor appointed to assist him shall, in any cause or matter, be entitled to act as both barrister and solicitor.

8. Application for legal aid. An application for legal aid shall be made as prescribed to the Under Secretary.

The Under Secretary shall consider each application received and shall cause to be made such further enquiries as he considers necessary and thereupon, if he is satisfied that—

(a) the applicant is without adequate means to provide defence for himself; and

(b) it is in the interests of justice that legal aid be provided for him, may approve that legal aid be granted to the applicant subject to such terms and conditions as are prescribed or so far as not prescribed as he determines.

9. Power to examine applicant for legal aid. (1) A stipendiary magistrate shall, upon a reference by the Under Secretary made orally or in writing, examine on oath any applicant for legal aid as to his means, resources and commitments.

(2) The Under Secretary shall, prior to such reference, give notice to the applicant orally or in writing that he requires the applicant to be so examined, and the stipendiary magistrate to whom the reference is made shall fix a date, time and place for the examination and shall notify the Under Secretary thereof.

Thereupon the Under Secretary shall give notice to the applicant orally or in writing of such date, time and place, and the applicant shall comply with the notice.

(3) Upon the appearance of the applicant, the stipendiary magistrate shall conduct the examination and shall report thereon forthwith to the Under Secretary.

If the applicant fails to appear on the date and at the time and place of which notice has been given to him, the stipendiary magistrate shall report that fact forthwith to the Under Secretary.

(4) Where a notice given pursuant to subsection (2) is in writing, it may be served upon the applicant personally or by post.

10. Power of court or tribunal to recommend legal aid. The court or tribunal before which a person appears for trial or sentence or to be otherwise dealt with may, if it is of opinion that there are special circumstances, recommend to the Under Secretary that that person be granted legal aid for the purposes of the trial or other proceedings.

Where the court or tribunal makes a recommendation pursuant to this section, the person in respect of whom the recommendation has been made shall make application for legal aid as prescribed and that application shall be dealt with and disposed of as if it were an application under section 8.

11. Duty of justices. The justices taking an examination of witnesses on a charge against a person of an indictable offence shall advise that person of the availability of legal aid and of the requirements prescribed with respect to an application for that aid—

(a) in a case where the offence the subject of the charge—

- (i) is punishable upon conviction by imprisonment for a term exceeding 14 years;
- (ii) is an offence that may be dealt with in accordance with section 29 (4) of the *Children's Services Act 1965-1973*,

before commencing to take the examination and upon his committal for trial or sentence;

(b) in all other cases, upon his committal for trial or sentence.

12. Liability for contribution. (1) A person to whom legal aid has been granted under this Act may be required by the Under Secretary to make such contribution to the Crown in respect of the amount expended on that legal aid as appears to the Under Secretary reasonable having regard to his means, resources and commitments, or if it so appears, to pay to the Crown the whole of that amount.

(2) A person may be required under this section to make a contribution in one sum prior to the commencement of the proceedings in respect of which legal aid has been granted or by instalments.

(3) Any sum payable by way of contribution from a person to whom legal aid has been granted under this Act shall be a debt due to the Crown.

13. False statements. A person who in any application, statement as to means, resources and commitments or other document required to be furnished under this Act, makes a statement that he knows to be false in a material particular or recklessly furnishes any such application, statement or other document that is false in a material particular, or knowingly fails to disclose any material fact, commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 12 months or both.

Upon a conviction for an offence defined in this section the court may, in addition to imposing a penalty, order the offender to pay to the Crown an amount determined by the court being the whole or part of the amount expended on legal aid under this Act granted in reliance upon the application, statement or other document with which the prosecution is concerned.

14. Proceedings generally. (1) A prosecution for an offence against this Act shall be taken by summary proceeding under the *Justices Act 1886-1973*.

(2) Any sum of money payable to the Crown pursuant to this Act may be recovered by—

- (a) summary proceeding under the *Justices Act 1886-1973*; or
- (b) action as for a debt in any court of competent jurisdiction.

(3) A summary proceeding for an offence against this Act or to recover any sum of money payable to the Crown pursuant to this Act shall be taken by the Under Secretary or by a person authorized in writing by the Under Secretary in that behalf.

15. Power of delegation. (1) The Minister or Under Secretary may either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate to the holder of an office, specifying its title but not the name of the holder for the time being, all or any of his powers, functions and duties under this Act except this power of delegation.

(2) A power, function or duty so delegated, if exercised or performed by the delegate, shall be exercised or performed in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms and limitations as the Minister or Under Secretary thinks fit including a requirement that the delegate shall report to the Minister or Under Secretary upon his exercise or performance of the delegated power, function or duty.

(4) The Minister or Under Secretary may make such and so many delegations of the same power, function or duty and to so many holders of office as he considers necessary or desirable.

(5) A delegation is revocable at the will of the Minister or Under Secretary and does not prevent the exercise of a power or the performance of a function or duty by him.

16. Indemnity. No matter or thing done by the Minister or Under Secretary or person acting with the authority of the Minister or Under Secretary, or by the Public Defender or a person assisting the Public Defender, in good faith and without negligence for the purpose of executing this Act or in the exercise of his powers or the performance of his functions and duties under this Act, shall subject the Crown, the Minister, Under Secretary, Public Defender or person to any liability in respect thereof.

17. Annual report. The Public Defender shall before 30th September in each year furnish to the Minister a report on the administration of and operations under this Act during the year that ended on 30th June last preceding.

The Minister shall lay the report before the Legislative Assembly.

18. Regulations. The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) applications for legal aid and the manner of making and dealing with them; investigations into those applications and reports thereon; the persons by whom those investigations shall be made;
- (b) the taking into account of the resources and commitments of an applicant for legal aid under this Act and those of other prescribed persons for the purposes of determining whether his means are such as to entitle him to legal aid and of determining the amount of contribution that he may be required to make towards the amount expended on legal aid;
- (c) the manner in which and the procedure by which contributions by persons to whom legal aid has been granted under this Act are determined;
- (d) the manner in which counsel and solicitors are to be assigned to persons to whom legal aid has been granted under this Act; the lodging of claims for professional services by counsel and solicitors so assigned; determination and payment of those claims; fixing fees payable to counsel and solicitors so assigned;

- (e) the forms to be used and the registers and records to be kept for the purposes of this Act and the particular purposes for which those forms, registers and records shall respectively be used and kept;
- (f) penalties for breach of the regulations not exceeding \$250 or imprisonment for 3 months or both;
- (g) all matters required or permitted by this Act to be prescribed and in respect of which the manner of prescription is not specified;
- (h) all matters and things for which it is necessary or convenient to provide for the proper administration of this Act or for achieving the objects and purposes of this Act.