

No. **33** of 2021.

Public Solicitor Act 2021.

Certified on : **7 FEB 2022**



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No. **33** of 2021.

AN ACT

entitled

Public Solicitor Act 2021,

Being an Act to provide for the -

- (a) purposes of implementing Part IX (***Constitutional Office-Holders and Constitutional Institutions***) of the ***Constitution*** in Section 177(6) of the ***Constitution***; and
- (b) additional functions to those functions conferred by Section 177(2) of the ***Constitution***; and
- (c) processes for obtaining legal aid to implement Section 177(5) of the ***Constitution*** by providing for the Public Solicitor to make reasonable charge for the services provided by the Public Solicitor, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3C (***qualified rights***) of the ***Constitution***, namely -

- (a) the right to freedom of expression conferred by Section 46; and
- (b) the right to reasonable privacy conferred by Section 49; and
- (c) the right to freedom of information as conferred by Section 51,

is a law that is made pursuant to Section 38 of the ***Constitution*** taking account of the National Goals and Directive Principles and Basic Social Obligations for the purpose of giving effect to the public interest in public order, public welfare and to protect and exercise the rights and freedoms of others in respect of access to affordable legal aid and related services, to the extent that it is reasonably justifiable in a democratic society having proper regard to the rights and dignity of all mankind.

2. INTERPRETATION.

In this Act, unless the contrary intention appears -

- “applicant” means a person who applies for legal aid;
- “client” means a person to whom the Public Solicitor grants legal aid;
- “employee” means a person employed by the Public Solicitor under this Act;
- “legal aid” means legal assistance or service in the form of advice, drafting or representation provided by the Public Solicitor under this Act;
- “Legal Aid Committee” means a committee established under Section 21;
- “legal officer” means a lawyer admitted to practice as a lawyer under the ***Lawyers Act 1986***;
- “means of a person” means the ability of a person to pay for alternative legal services;

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“merits of a case” relates to the prospect of success of a claim, a defence, an appeal, a review or an application in court;

“National Justice Administration” means the National Justice Administration established under Section 154 of the *Constitution*;

“officer” means a legal officer employed by the Public Solicitor under this Act;

“person” means -

(a) a natural person; or

(b) a body corporate duly incorporated under the *Companies Act 1997*;

“person in need” means a person -

(a) who cannot afford the services of private lawyer; or

(b) where hardship may result if compelled to obtain legal assistance other than by the public solicitor; or

(c) where there are no alternative legal services available in his particular locality;

“Public Solicitor” is a person occupying the office established under Section 176 (*Public Prosecutor and Public Solicitor*) of the *Constitution*;

“services” means any legal aid rendered by the Public Solicitor;

“the office” means the office of the Public Solicitor.

3. PURPOSE.

This law is in addition to, and not in derogation of the powers, functions, duties and responsibilities of the Public Solicitor as prescribed under Division VI.5G (*the Public Prosecutor and Public Solicitor*) of the *Constitution* and to give effect to Sections 176, 177 and 224 of the *Constitution*.

PART II. - PUBLIC SOLICITOR’S FUNCTIONS AND POWERS, AND DELEGATION OF POWERS.

Division 1. - Public Solicitor’s functions and powers, etc.

4. ADMINISTRATIVE ORDERS.

In this Part, “administrative orders” means a set of directives issued by the Public Solicitor to his employees.

5. PUBLIC SOLICITOR’S FUNCTIONS.

In addition to the Public Solicitor’s functions under Section 177(2) of the *Constitution*, the following are the functions of the Public Solicitor under this Act:

(a) to provide legal aid; and

(b) to protect and facilitate for the enforcement of the constitutional rights of all persons; and
(c) to make a Reference to the Supreme Court on any question of law which arise from the discharge of his functions or on the constitutionality of any law; and

(d) to provide assistance and engage in alternative dispute resolution processes involving legal issues affecting the clients of the Public Solicitor; and

(e) to engage with or support non-governmental agencies, international organisations, bilateral partners or Government bodies in so far as the engagement concerns or relates to the National Justice Administration; and

(f) to provide advice to a person in need insofar as the advice concerns or relates to the National Justice Administration; and

(g) may exercise all functions and powers and perform all duties which, under any other law, are or may be or become vested in or are delegated to the Public Solicitor; and

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- (h) to do all such matters and things as may be incidental to or consequential upon the exercise of his powers or the discharge of his functions.

6. POWERS OF THE PUBLIC SOLICITOR.

(1) The Public Solicitor has all powers to do all things necessary and convenient for or in connection with or incidental to the performance of his functions under this Act.

- (2) These powers shall include, but not limited to -
- (a) granting or rejecting an application for legal aid; and
 - (b) determining fees for services provided; and
 - (c) making reasonable charges for services provided; and
 - (d) engagement of employees of the office subject to Section 7; and
 - (e) issuing directions, guidelines, policies or determinations necessary for the performance of his functions and the administration of the office.

7. DELEGATION OF POWERS.

The Public Solicitor may delegate his powers to an employee or class of employees in writing under his hand by way of an instrument of delegation, all or any powers and functions under this Act.

8. EMPLOYEES OF THE PUBLIC SOLICITOR.

(1) The Public Solicitor may, as he determines, employ persons as are necessary for the efficient performance of his functions.

(2) A person employed by the Public Solicitor under this Act shall be an employee of the Public Solicitor.

(3) Employees of the Public Solicitor are not employees of the National Public Service.

(4) Employment of persons under Subsection (1) shall be in accordance with an organisational structure approved by the Public Solicitor in consultation with the Department of Personnel Management.

9. NATIONAL GOVERNMENT, GOVERNMENTAL BODIES, ETC., TO SUPPORT PUBLIC SOLICITOR'S FUNCTIONS.

(1) For the purposes of Section 8, the National Government and governmental bodies, public office holders and institutions so far as is within their powers, shall ensure the Public Solicitor is provided with the necessary facilities and resources to enable him to employ persons to support the performance of his functions.

(2) The Public Solicitor may make a determination by way of an administrative order for all personnel matters affecting his employees, including but not limited to -

- (a) recruitment, discipline, promotion and retirement of employees; and
- (b) contract and non contract employees; and
- (c) terms and conditions of employment, subject to the *Salaries Conditions Monitoring Committee Act 1988*; and
- (d) any other matter incidental to Paragraphs (a), (b) and (c).

10. PUBLIC SERVICE RIGHTS.

Where a person appointed as -

- (a) the Public Solicitor; or

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(b) an employee in the Public Solicitor, was, immediately before his appointment, an officer of the Public Service within the meaning of the *Public Services (Management) Act 1995*, his services as the Public Solicitor or an employee, as the case may be, shall, for the purpose of determining his existing and accruing rights (if any), be counted as service in the Public Service.

Division 2. - Administrative orders, secondment engagement, etc.

11. ADMINISTRATIVE ORDERS BY PUBLIC SOLICITOR.

(1) The Public Solicitor may issue administrative orders as are necessary to facilitate the performance of his functions, duties and responsibilities.

(2) The Public Solicitor's administrative order must be consistent with this Act and provided where necessary, for the efficient management and control of his office.

(3) The Public Solicitor shall give effect to any relevant decisions on policy made by the National Executive Council by formulating administrative orders.

(4) The Public Solicitor may issue additional instructions, policies or practice directions from time to time.

12. SECONDMENT ENGAGEMENT.

The Public Solicitor may arrange for the secondment engagement of -

(a) an employee of his office to any other public or private body; or

(b) a person from another public office or private office to his office,

for training or specialist service purposes.

13. RESPONSIBILITY OF THE NATIONAL GOVERNMENT.

The State shall pay to the Public Solicitor such sum each year as is determined by the National Executive Council after considering the sum estimates submitted by the Public Solicitor as sufficient to enable the performance of the functions of the Public Solicitor.

PART III. - LEGAL AID.

Division 1. - Application for legal aid, person in need, etc.

14. APPLICATION FOR LEGAL AID.

A person may apply to the Public Solicitor for legal aid in accordance with the procedures established under this Act.

15. LEGAL AID.

(1) The Public Solicitor may, in accordance with this Act, provide legal aid to a person who applies.

(2) Legal aid shall be administered in accordance with this Act and any other orders, policies and guidelines prescribed by the Public Solicitor.

16. CONSIDERATION FOR APPLICATION FOR LEGAL AID.

An application for legal aid shall be determined upon consideration of the following:

(a) the means of the person applying for legal aid; and

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(b) the merits of a case for which the applicant applies for legal aid.

17. PERSON IN NEED TO APPLY IN WRITING.

A person who is in need of legal aid or assistance shall apply in writing to the Public Solicitor in the prescribed form.

18. APPLICANT TO PROVIDE PUBLIC SOLICITOR WITH INFORMATION.

An applicant for legal aid or assistance shall provide to the Public Solicitor -

- (a) such information; or
- (b) declarations, if any; or
- (c) relevant certificates; or
- (d) any other documents,

as the Public Solicitor requires, to enable the Public Solicitor to determine whether legal aid should be granted in respect of the application.

19. APPLICANTS FOR LEGAL AID IN SAME PROCEEDINGS.

(1) Where the applicants for legal aid are opposing parties in the same proceedings, the Public Solicitor shall determine the application made first in time.

(2) The Public Solicitor shall refuse legal aid to an applicant who is an opposing party in the same proceeding for which his client is granted legal aid.

20. LEGAL AID APPLICATION FOR A CHILD.

(1) In this section "parent" means -

- (a) the mother of a child; or
- (b) the father of a child; or
- (c) a step-parent; or
- (d) an adopted parent; or
- (e) a primary care-giver; or
- (f) a person to whom custody of a child has been granted by a Court under this Act of or by an agreement, but does not include a care-giver or the Director.

(2) A parent shall make an application for legal aid for a child.

(3) The child shall be deemed to be the applicant.

21. ESTABLISHMENT OF LEGAL AID COMMITTEE.

The Public Solicitor may establish a Legal Aid Committee.

22. MEMBERSHIP OF THE LEGAL AID COMMITTEE.

Where the Public Solicitor has established a Legal Aid Committee, he shall, under an administrative order, appoint -

- (a) members of the Legal Aid Committee; and
- (b) a Deputy Public Solicitor as the chairperson of the Committee,

by an Instrument of Appointment.

23. FUNCTIONS OF THE LEGAL AID COMMITTEE.

Subject to Section 21, the Public Solicitor shall express the functions of the Legal Aid Committee in an Instrument of Delegation.

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24. DETERMINATION OF LEGAL AID.

(1) Where the Public Solicitor has established a Legal Aid Committee under Section 21, the Public Solicitor may prescribe a Legal Aid Policy and a Legal Aid Process to facilitate screening of applications for legal aid.

(2) The Legal Aid Committee shall determine an application for legal aid in accordance with the Legal Aid Committee's guidelines and policies.

(3) In considering an application under Section 16, the applicant may be required to furnish further evidence or particulars to assist in determining legal aid.

(4) Notwithstanding Section 16(b), legal aid may be granted to a person charged with a criminal offence, except in cases of criminal appeals or reviews.

25. PURPOSE FOR GRANTING LEGAL AID.

(1) The Public Solicitor may grant legal aid for purposes of -

- (a) providing legal advice; or
- (b) drafting of legal documentation; or
- (c) legal representation (which may include legal advice and documentation).

(2) A person in need who has been granted legal aid by the Public Solicitor, is a client of the Public Solicitor.

26. REFUSAL OF LEGAL AID.

(1) The Public Solicitor may refuse to provide legal aid to a person.

(2) An applicant who is refused legal aid may make a request to the Public Solicitor to reconsider his decision in circumstances where -

- (a) there is a change in the applicant's circumstances; or
- (b) legal aid is refused on the basis of inadequacy of instructions or incompetency of the application.

(3) Notwithstanding any other law, refusal of legal aid by the Public Solicitor is not subject to review by any person or authority, except in accordance with Section 177 (2)(b) and (3) of the *Constitution*.

(4) For the purposes of this section, any proceedings purported to be initiated by the Public Solicitor without first complying with this Act, shall be deemed to be refused.

(5) A decision made by the Public Solicitor under Subsection (2) is final.

(6) In a case where legal aid is refused, the Public Solicitor shall provide to the applicant, his reasons in written form for refusing legal aid.

Division 2. - Records and Court directions.

27. TERMINATION OR VARIATION OF LEGAL AID.

A decision to grant legal aid may be varied at any time so as to -

- (a) terminate the provision of legal aid; or

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- (b) alter the nature or extent of legal aid; or
- (c) make the provision of legal aid subject to a condition in accordance with the *Public Solicitor (Charges) Act* (Chapter 337); or
- (d) alter a condition to which the provision of legal aid is subject, in accordance with the *Public Solicitor (Charges) Act 1976*.

28. RECORDS.

(1) All applications made to the Public Solicitor under Section 14 shall be recorded and registered into a case management system to be maintained by the office.

(2) A decision to grant or refuse legal aid shall be marked by the Public Solicitor's official stamp.

29. COURT DIRECTIONS.

(1) For the purposes of Section 177(2)(b) of the *Constitution*, the Public Solicitor shall provide legal aid to a person when directed by the Supreme Court or National Court.

(2) Where a direction under Subsection (1) is made in respect of a person to whom legal aid has first been refused, the Public Solicitor shall be heard on his written reasons for refusing legal aid by the Court which issued the direction.

(3) Where in a proceeding, a Court considers a person to be a "person in need", the Court may refer the person to the Public Solicitor for legal aid instead of issuing a direction.

- (4) Where the Court directs the Public Solicitor to provide legal aid, the Court shall have regard to -
- (a) resources and the order of priorities of the Public Solicitor; and
 - (b) whether legal aid was considered; and
 - (c) reason for refusal in the first instance; and
 - (d) the referral of the person to the Public Solicitor for legal aid.

PART IV. - TRUST ACCOUNTS, GENERAL ACCOUNTS, APPLICATION OF MONIES, ETC.

30. TRUST ACCOUNT.

(1) The Public Solicitor shall open and maintain a trust account with an approved bank or approved banks to hold monies on behalf of his clients for the purposes of the *Lawyers Act 1986*.

(2) Subject to Subsection (3), on the first business day of the months of January, April, July and October, any interest paid upon the balance of a trust account maintained by the Public Solicitor under Subsection (1) shall be payable, calculated at a prescribed rate, to the Public Solicitor notwithstanding provisions to the contrary in any other law.

(3) A bank may deduct from any amount payable under Subsection (2) for reasonable administration charges in relation to the calculation and payment of the amount payable.

(4) For the purpose of Subsection (2), any payment made to the Public Solicitor shall be paid to the credit of an account held by the Public Solicitor under Section 31.

(5) Any trust account held by the Public Solicitor under the *Public Finances (Management) Act 1995*, on the coming into operation of this Act, shall be deemed to be an account created under this Act.

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(6) For the avoidance of doubt, Part III of the *Public Finances (Management) Act 1995*, in so far as it relates to the establishment and management of trust accounts, shall not apply to a trust account established under this section.

31. GENERAL ACCOUNT.

(1) The Public Solicitor shall operate and maintain an account with an approved bank or approved banks and shall maintain only one such account at all times.

(2) The account shall be for the purposes of holding -

- (a) all monies paid to the office of the Public Solicitor as charges under the *Public Solicitor (Charges) Act* (Chapter 337); and
- (b) all monies paid to the office of the Public Solicitor as payments for rental in respect of any real property held by the office of the Public Solicitor; and
- (c) any monies in the form of grant or donation made to the office of the Public Solicitor, by any government agency, non-government agency or donor agency; and
- (d) interest payable on a trust account under Section 30.

(3) The Public Solicitor shall prescribe guidelines in respect of the application of monies held to the credit of an account established under Subsection (1).

32. APPLICATION OF MONIES.

All monies received by the Public Solicitor as client charges or costs, contributions or fees or interests under the *Public Solicitor (Charges) Act* (Chapter 337), shall be retained by the Public Solicitor for the purposes of funding and supporting the Public Solicitor's operations.

PART V. - MISCELLANEOUS.

33. REGULATIONS.

The Head of State, acting on advice from the National Executive Council, may make a Regulation.

34. ASSETS.

Any property (both real and personal), assigned to the office of the Public Solicitor by any government body shall, upon the coming into operation of this Act, be transferred to the office of the Public Solicitor.

35. INDEPENDENCE OF PUBLIC SOLICITOR.

(1) Except as provided under Section 177(2) of the *Constitution*, the Public Solicitor is not subject to any direction or control of any person or authority, in the performance of his function under this Act.

(2) An officer whilst acting on the instructions and on behalf of the Public Solicitor in the performance of the Public Solicitor's functions is not subject to direction or control in the exercise of those functions by any person other than the Public Solicitor.

36. IMMUNITY.

The Public Solicitor and an employee of the Public Solicitor is not personally liable for anything done or omitted to be done in good faith in the performance or exercise or purported performance or exercise, of a function or power under this or any other Act.

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37. LIABILITY OF THE STATE.

(1) Where, by any act or thing done or omitted by the Public Solicitor or the office, in the performance of his functions under the *Constitution* and this Act, any person who sustains an injury that would have entitled the person to a remedy, if it had been done or omitted by a private person, that person is entitled to the same remedy against the State as he would have been entitled to against a private person.

(2) Any claim against the Public Solicitor is subject to the *Claims By and Against the State Act 1996*.

PART VI. - TRANSITIONAL SAVINGS.

38. TRANSITIONAL.

The Public Solicitor shall be given a 12 months grace period from the commencement of this Act, to bring his services into full compliance with this Act.

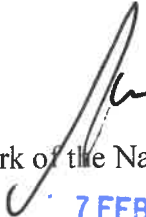
39. SAVINGS.

(1) Nothing in this Act affects the validity of any act done or decision made by the Public Solicitor under any other law, before the coming into operation of this Act.

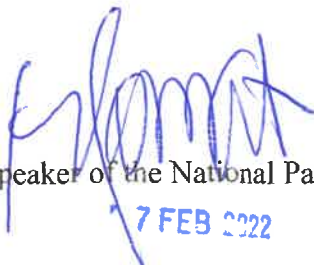
(2) All client monies held by the office immediately before the coming into operation of this Act are, on that coming into operation, transferred to and become part of the Trust Account established under Section 30 of this Act.

(3) All monies payable to the Office of the Public Solicitor, prior to the coming into operation of this Act, and remaining due and payable on that coming into operation shall, on that coming into operation remain due and payable as monies due under this Act.

I hereby certify that the above is a fair print of the *Public Solicitor Act 2021*, which has been made by the National Parliament.


Clerk of the National Parliament.
7 FEB 2022

I hereby certify that the *Public Solicitor Act 2021*, was made by the National Parliament on 23 November 2021, by an absolute majority in accordance with the *Constitution*.


Speaker of the National Parliament.
7 FEB 2022