

VICTORIA.



ANNO TERTIO DECIMO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 7117.

An Act to make Provision with respect to the Liability for Costs of certain Litigation, to establish an Appeal Costs Fund to meet such Liability, to appoint an Appeal Costs Board, and for Purposes connected therewith.

[28th April, 1964.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

- Short title. 1. (1) This Act may be cited as the *Appeal Costs Fund Act* 1964.
- Commencement (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.
- Interpretation. 2. In this Act unless inconsistent with the context or subject-matter—
- “Appeal.” “Appeal” includes an order to review, a case stated for the opinion of a superior court on a question of law, a motion for a new trial and any other proceeding in the nature of an appeal.

“Board”

- “ Board ” means the Appeal Costs Board constituted under this Act. “Board.”
- “ Costs ” in relation to an appeal includes the costs of an application for an indemnity certificate in respect of an appeal but does not include costs incurred in a court of first instance except where otherwise expressly provided. “Costs.”
- “ Court ” includes the Industrial Appeals Court established under the *Labour and Industry Act* 1958. “Court.”
- “ Fund ” means the Appeals Costs Fund established under this Act. “Fund.”
- “ Indemnity certificate ” means an indemnity certificate granted under section thirteen of this Act. “Indemnity certificate.”
- “ Respondent ” includes the next friend of an infant or person under disability or the guardian *ad litem* of any person. “Respondent.”
- “ Sequence of appeals ” means a sequence of appeals in which each appeal that follows next after another appeal in the sequence is an appeal against the decision in that other appeal. “Sequence of appeals.”
- “ Supreme Court ” means the Supreme Court of Victoria. “Supreme Court.”

APPEAL COSTS FUND.

3. (1) There shall be kept in the Treasury a Fund to be called the “ Appeal Costs Fund ”. Appeal Costs Fund.
- (2) Into the Fund shall be paid the amounts referred to in section eleven of this Act.
- (3) Out of the Fund shall be paid the amounts referred to in section fourteen and in sections eighteen and nineteen of this Act and the costs of the administration of this Act.
- (4) Interest derived from the investment of the Fund shall form part of the Fund. Interest.
- (5) Where the Board certifies that the Fund is insufficient to meet any payment required by this Act to be made out of the Fund such payment shall be made out of the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly) and when any such payment is made out of the Consolidated Revenue it shall be deemed to be an advance to the Fund and shall remain a charge thereon to be recouped out of the Fund when funds are available. Where Fund insufficient.

APPEAL COSTS BOARD.

4. (1) For the purposes of this Act there shall be a Board to be called the “ Appeal Costs Board ”. Appeal Costs Board.
- (2) The Board shall consist of three persons appointed by the Attorney-General of whom— Constitution of Board.
- (a) one shall be appointed as chairman of the Board ;
- (b) one

(b) one shall be nominated in writing by the Council of the Law Institute of Victoria ; and

(c) one shall be nominated in writing by the Victorian Bar Council.

Procedure upon
absence of
nomination.

(3) If for any reason either of the bodies aforesaid does not within twenty-eight days after being requested in writing in that behalf by the Attorney-General submit a nomination as aforesaid, the Attorney-General may, without such nomination, appoint an otherwise eligible person to be a member of the Board to represent the interests of the body concerned and the person so appointed shall for all purposes be deemed to be duly appointed.

Removal.

(4) The Attorney-General may at any time remove any person appointed to the Board and appoint another person in his stead.

Term of office.

(5) Members appointed to the Board shall be entitled to hold office for such term not exceeding three years as the Attorney-General determines but upon the expiration of the term for which any member is appointed he shall be eligible for re-appointment.

Chairman.

5. (1) At any meeting of the Board the Chairman shall preside.

Quorum.

(2) Two members of the Board shall form a quorum of the Board but subject to there being a quorum the Board may act notwithstanding any vacancy in its membership.

Decisions.

(3) The decision upon any matter of the majority of members at any meeting shall be the decision of the Board on that matter.

(4) If at any meeting of the Board at which two members only are present the members differ in opinion upon any matter the determination of that matter shall be postponed to a full meeting of the Board.

Procedure.

(5) Subject to this Act and the regulations the Board may regulate its own proceedings.

(6) The members of the Board shall not as such be subject to the *Public Service Act* 1958.

Travelling
expenses, &c.

(7) The members of the Board shall be entitled to receive such fees travelling expenses and allowances as are prescribed.

Functions of
Board.

6. The functions of the Board shall be—

(a) to exercise and discharge the powers, authorities, duties, functions and obligations conferred and imposed on the Board by or under this Act ; and

(b) to advise the Attorney-General upon any matter submitted by him to the Board relating to the operation of this Act.

7. Subject

7. Subject to the *Public Service Act* 1958 there may be appointed Officers a secretary to the Board and such other officers as are necessary for carrying out the objects of this Act.

FINANCIAL.

8. In addition to any fee which may be payable under any Act or the rules of any court upon any writ summons complaint or other document for commencing any legal proceeding there shall be paid to the proper officer of the court the appropriate fee following, namely—

Additional fee to be paid on issue or filing of writs, &c.

- (a) upon the issue of any writ or summons whereby any action or suit is commenced in the Supreme Court of Victoria—One pound ;
- (b) upon the issue of any summons whereby any proceeding is commenced in the county court—Ten shillings ;
and
- (c) upon the issue of any complaint or summons whereby any proceeding is commenced in a court of petty sessions or before justices—One shilling.

9. The provisions of the last preceding section shall not apply in respect of any writ summons complaint or other document upon the issue of which no fee is payable pursuant to the express provisions of any Act or rule of court for the time being in force.

Additional fee not payable in certain cases.

10. During the months of January, April, July and October in each year the Secretary to the Law Department shall cause to be prepared and sent to the Treasurer a statement signed by him setting forth the total number of writs summonses or complaints upon which a fee is payable under this Act appearing from records in his custody or control to have been issued out of or returnable in the respective jurisdictions of all courts during the period of three months preceding the first day of the month concerned.

Statement to Treasurer of total number of writs issued.

11. Upon receiving any such statement as aforesaid the Treasurer shall cause to be paid out of the Consolidated Revenue (which is hereby to the necessary extent appropriated accordingly) and into the Appeal Costs Fund an amount equivalent to the sum of the additional fees payable under section eight of this Act which are paid to the Consolidated Revenue in respect of the number of writs summonses and complaints specified in the statement.

Treasurer to pay amount of additional fees to Appeal Costs Fund.

12. (1) No

Payment out of Fund.

12. (1) No moneys shall be paid out of the Fund otherwise than upon and in accordance with a certificate of the Board.

(2) The Board shall not issue a certificate for the payment of any moneys out of the Fund unless it is satisfied that the payment is authorized by this Act to be made from the Fund and that the provisions of this Act and the regulations in relation to any claim for the payment have been complied with.

INDEMNITY CERTIFICATE.

Power to Supreme Court to grant indemnity certificate.

13. (1) Where an appeal against the decision of a court—
- (a) to the Supreme Court ;
 - (b) to the High Court of Australia from a decision of the Supreme Court ;
 - (c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court ;
 - (d) to the Queen in Council from a decision of the Supreme Court—

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

(2) Where an appeal is determined by the Queen in Council or the High Court of Australia the power conferred upon the Supreme Court by the last preceding sub-section may be exercised by a judge of the Supreme Court sitting in chambers.

Power to court of general sessions to grant indemnity certificate.

(3) Where an appeal against the decision of a court to a court of general sessions of the peace on a question of law succeeds, the court of general sessions may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

(4) Where an appeal against the decision of a court to the Industrial Appeals Court on a question of law succeeds the Industrial Appeals Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

Certificate entitles respondent to payment of costs from the Fund.

14. (1) Subject to this Act where a respondent to an appeal has been granted an indemnity certificate, the certificate shall entitle the respondent to be paid from the Fund—

- (a) an amount equal to the appellant's costs—
 - (i) of the appeal in respect of which the certificate was granted ; and also

(ii) where

- (ii) where that appeal is an appeal in a sequence of appeals, of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted—
ordered to be paid and actually paid by the respondent ;
- (b) an amount equal to the respondents' costs—
 - (i) of the appeal in respect of which the certificate was granted ; and also
 - (ii) where that appeal is an appeal in a sequence of appeals, of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted—
as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party ; and
- (c) where the costs referred to in paragraph (b) of this sub-section are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

(2) Where an indemnity certificate has been granted as aforesaid and the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay to the appellant the costs referred to in paragraph (a) of the last preceding sub-section or any part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the Board may direct that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the Fund in accordance with the direction of the Board and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this section—

- (a) the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of sub-section (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of the said sub-section ; and
- (b) the amount payable from the Fund to any one respondent under or pursuant to any one indemnity certificate shall not in any case exceed the sum of

One thousand pounds or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the *Government Gazette*.

(4) The Governor in Council may by proclamation published in the *Government Gazette* vary or revoke any proclamation made under this section.

Indemnity certificate vacated in certain circumstances.

15. An indemnity certificate granted to a respondent in respect of an appeal, being an appeal in a sequence of appeals, shall be vacated if—

- (a) in a later appeal in the sequence the successful party is the one to whom the indemnity certificate is granted ; or
- (b) an indemnity certificate is granted in respect of a later appeal in the sequence and the respondent to the earlier appeal is a party to the later appeal.

Indemnity certificate to have no force or effect in certain circumstances.

16. (1) An indemnity certificate granted to a respondent in respect of an appeal shall have no force or effect—

- (a) where a time is limited for appealing against the decision in the appeal—during the time limited for appealing against the decision in the appeal ;
- (b) where an appeal lies against the decision in the appeal but no time is limited—until an application for leave to appeal against the decision in the appeal has been determined and where leave is granted, the appeal is instituted, or until the respondent lodges with the Board an undertaking in writing by the respondent that the respondent will not seek leave to appeal or appeal against the decision in the appeal, whichever first happens ;
- (c) notwithstanding anything contained in the foregoing provisions of this sub-section where the decision in the appeal is the subject of an appeal—during the pendency of the appeal.

(2) Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under the last preceding section any reference in this section to the decision in the appeal shall be construed as including a reference to the decision in the later appeal or in each such later appeal (as the case may be) and any reference to the pendency of the appeal shall be construed as including a reference to the pendency of the later appeal or of each later appeal (as the case may be).

(3) Where

(3) Where an undertaking has been given by a respondent under the foregoing provisions of this section and thereafter he seeks leave to appeal or appeals against the decision to which the undertaking relates, the respondent shall, upon demand made by the Board, pay to the Board any amount paid to him, or for and on his behalf under the indemnity certificate and the amount concerned may be recovered by the Board from the respondent as a debt in any court of competent jurisdiction.

(4) Any amount paid to or recovered by the Board under the last preceding sub-section shall be paid into the Fund.

(5) Nothing in this section shall affect the operation of section fifteen of this Act.

17. (1) The grant or refusal of an indemnity certificate shall lie in the discretion of the court and no appeal shall lie against any such grant or refusal.

No appeal against grant or refusal of indemnity certificate.

(2) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.

(3) An indemnity certificate shall not be granted in favour of the Crown.

18. (1) Where after the commencement of this Act—

(a) any civil or criminal proceedings are rendered abortive by the death or protracted illness of the judge, magistrate or justice before whom the proceedings were had or by disagreement on the part of the jury where the proceedings are with a jury ;

Abortive proceedings and new trials after proceedings discontinued.

(b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered ; or

(c) the hearing of any civil or criminal proceeding is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to the act, neglect or default, in the case of civil proceedings, of all or of any one or more of the parties thereto or their legal practitioners, or, in the case of criminal proceedings, of the accused or his legal practitioners, and the presiding judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or justice is hereby authorized to grant)—

(i) in the case of civil proceedings—to any party thereto stating the reason why the proceedings were discontinued and a new

trial

trial ordered and that the reason was not attributable in any way to the act, neglect or default of all or any one or more of the parties to the proceedings or their legal practitioners ; or

- (ii) in the case of criminal proceedings—to the accused stating the reason why the proceedings were discontinued and a new trial ordered and that the reason was not attributable in any way to the act, neglect or default of the accused or his legal practitioners—

any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, who incurs additional costs by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of the order for a new trial, as the case may be, shall be entitled to be paid from the Fund any costs incurred by him in the proceedings before they were so rendered abortive or the conviction was quashed or the hearing of the proceedings was so discontinued, as the case may be.

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

New trial on ground that damages awarded are excessive or inadequate.

19. (1) Where after the commencement of this Act a new trial is ordered in an action on the ground that the verdict of the jury was against the evidence or the weight of the evidence or 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—

- (a) an amount equal to the costs of the appellant in the motion for and upon the new trial ordered to be paid and actually paid by the respondent :

Provided that where the Board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the Board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant shall be entitled to payment from the

Fund

Fund in accordance with the direction and the Fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction ;

- (b) an amount equal to the respondent's costs of the motion for and upon the new trial, as taxed or agreed upon by the Board and the respondent or the respondent's solicitor and not ordered to be paid by any other party ; and
- (c) where the costs referred to in paragraph (b) of this sub-section are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

Notwithstanding anything to the contrary in the foregoing provisions of this sub-section—

- (i) the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of this sub-section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this sub-section ;
- (ii) the amount payable from the Fund to any one respondent in respect of the motion for a new trial shall not in any case exceed the sum of One thousand pounds or such other amount as may be fixed for the time being in lieu thereof by the Governor in Council by proclamation published in the *Government Gazette*.

(2) The Governor in Council may by proclamation published in the *Government Gazette* vary or revoke any proclamation under this section.

(3) This section does not apply where the respondent to the motion for the new trial is the Crown.

20. The Governor in Council may make regulations prescribing all matters which by this Act are required or authorized to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and in particular without limiting the generality of the foregoing provisions of this section for or with respect to—

Power to
Governor in
Council to
make
regulations.

- (a) the making of payments out of the Fund ;
- (b) the taxation or assessment of costs for the purposes of this Act in circumstances not provided for under the rules of the appropriate court or where a party to an appeal refuses or neglects to tax his costs ;

(c) prescribing

- (c) prescribing officers by whom bills of costs may be taxed for the purposes of this Act in different courts or in different jurisdictions of a court ;
 - (d) regulating the preparation and service of bills of costs proposed to be taxed for the purposes of this Act ;
 - (e) prescribing fees travelling expenses and allowances of members of the Board ; and
 - (f) prescribing forms for the purposes of this Act.
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