

SUITORS' FUND.

13° Elizabeth II., No. XLIII.

No. 43 of 1964.

AN ACT to make Provision in respect of the Liability for Costs of certain Litigation; to establish a Suitors' Fund to meet that Liability; and for incidental and other purposes.

[Assented to 19th November, 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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Suitors' Fund Act, 1964.* Short title.

2. (1) Subject to subsection (2) of this section, this Act shall come into operation on a date to be fixed by proclamation. Commencement.

(2) It shall not be necessary to proclaim that the whole Act shall come into operation on one day, but the several sections of this Act may be proclaimed to come into operation on such days as are respectively fixed by proclamation.

**Interpreta-
tion.**

3. In this Act unless the contrary intention appears—

“appeal” includes any proceeding by way of discharging or setting aside a judgment, a motion for a new trial, a case stated for the opinion of the Supreme Court on a question of law and any other proceeding in the nature of an appeal;

“company” and “foreign company” have the same meanings as they respectively have in section five of the Companies Act, 1961;

“costs” in relation to an appeal includes the costs of an application for an indemnity certificate in respect of the appeal, but does not include costs incurred in a court of first instance except where otherwise expressly provided;

“Court” includes the Workers’ Compensation Board constituted under the Workers’ Compensation Act, 1912;

“indemnity certificate” means an indemnity certificate granted under section ten of this Act;

“sequence of appeals” means a sequence of appeals in which each appeal that follows the last preceding appeal in the sequence is an appeal against the decision in the last preceding appeal;

“the Board” means the Appeal Costs Board constituted under this Act;

“the Fund” means the Suitors’ Fund established under this Act;

“Under Secretary” means the person holding the office of Under Secretary of the Crown Law Department of the State and includes any person for the time being duly acting in the place of the Under Secretary.

4. (1) There shall be established and kept at the Treasury a Fund to be called the “Suitors’ Fund”.

Suitors’
Fund
established.

(2) The amounts referred to in subsection (2) of section six of this Act shall be paid into the Fund.

(3) The amounts referred to in sections eleven, fourteen and fifteen of this Act and the cost of the administration of this Act shall be paid out of the Fund.

(4) All interest derived from the investment of the Fund forms part of the Fund.

(5) The Fund is, subject to this Act, under the direction, control and management of the Board.

“This Act”
includes
regulations.
See S. 4
No. 30 of
1918.

(6) Where the Board certifies in writing to the Treasurer that the amount of money standing to the credit of the Fund is, for the time being, insufficient for the purposes of this Act, the Treasurer may, with the approval of the Governor, from time to time advance to the Fund from the Public Account (which is hereby to the necessary extent appropriated accordingly), advances of such amounts as are sufficient for the time being to make up the deficiency:

(7) (a) Any amount advanced to the Fund pursuant to subsection (6) of this section shall be subsequently repaid to the Treasurer from the Fund by the Board, when money is available to the Fund to make the repayment, and the amount of each advance when so repaid shall be paid by the Treasurer into the Public Account.

(b) The amount of any money so advanced by the Treasurer to the Fund is, while the money remains unpaid, a charge on the Fund.

(8) Where the Board certifies in writing to the Treasurer that any money standing to the credit of the Fund is, not immediately required for the purposes of this Act the Treasurer may temporarily invest so much of the money as he considers practicable so to do, in any investments authorised by law as those in which trust funds may be invested and shall cause all interest therefrom to be paid to the credit of the Fund.

(9) The accounts relating to the Fund shall be audited by the Auditor General appointed under the Audit Act, 1904.

Additional
fees to be
paid to the
Fund.

5. There shall be paid to the proper officer of the appropriate Court—

- (a) upon the issue of any writ of summons whereby an action is commenced in the Supreme Court;
- (b) upon the entry of plaint in the Local Court; or
- (c) upon the issue of any summons to a defendant upon complaint under the Justices Act, 1902 whereby any proceeding is commenced in a Court of Petty Sessions,

in addition to any fee which may be payable in respect thereof under any Act or rules of any Court, the sum of one shilling or such other sum not exceeding two shillings as may from time to time be prescribed.

Under
Secretary
to advise
Treasurer of
total number
of writs, etc.
issued.

6. (1) During the months of January, April, July and October of each year, the Under Secretary shall cause to be prepared and sent to the Treasurer, a statement signed by him, specifying the total number of processes referred to in section five of this Act, upon which a fee is payable under this

Act, that appear from records in the custody or control of the Crown Law Department of the State, to have been issued out of or returnable in the Supreme Court, Local Courts or Courts of Petty Sessions during the period of three months immediately preceding the first day of the month in which the statement is prepared.

(2) The Treasurer shall, as soon as practicable after the receipt by him of the statement referred to in subsection (1) of this section, cause to be paid out of the Public Account (which is hereby to the necessary extent appropriated accordingly) and into the Fund, an amount equal to the total sum of the additional fee payable under section five of this Act that is paid into the Public Account in respect of the processes specified in the statement.

7. (1) Payment shall not be made out of the Fund except upon and in accordance with a written direction of the Board.

Payment out of Fund.

(2) The Board shall not issue such a direction unless it is satisfied that the payment from the Fund to which the direction relates is authorised by or under this Act and that the provisions of this Act relating to any claim for the payment have been complied with.

"This Act" includes regulations. See S. 4 No. 30 of 1918.

8. (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 members appointed by the Governor of whom—

Constitution of Board.

- (a) one shall be appointed as Chairman of the Board;
- (b) one shall be a person who is nominated in writing by the Law Society of Western Australia (Inc.) and who is willing to act as a member of the Board; and

- (c) one shall be a person who is nominated in writing by the Barristers' Board constituted under the Legal Practitioners Act, 1893 and who is so willing.

Power to
Minister to
appoint in
default of
nomination.

(3) If either of the bodies referred to in subsection (2) of this section does not within thirty days after being requested in writing by the Minister so to do, submit a nomination of a person as member of the Board, the Minister may, without the nomination, appoint an otherwise eligible person to be a member of the Board to represent the interests of the body in default and the person so appointed shall for all purposes be deemed to be duly appointed.

Removal.

(4) The Governor may at any time remove any person appointed to the Board and appoint another otherwise eligible person in his stead to represent, where the case requires, the interests of the body represented by the member in whose place he is appointed.

Term of
member.

(5) Each member appointed to the Board, including the Chairman thereof, is entitled to hold office for such term not exceeding three years as the Governor specifies at the time of his appointment and is eligible for re-appointment.

Vacancy in
office of
member.

(6) The exercise or performance of the functions or powers of the Board is not affected by reason only of there being a vacancy in the office of a member.

Chairman to
preside at
meetings.

9. (1) The Chairman shall preside at all meetings of the Board at which he is present.

Quorum.

(2) At a meeting of the Board two members constitute a quorum.

Decisions.

(3) A question arising at a meeting of the Board shall be decided by a majority of the votes of the members present.

(4) Where two members only are present at a meeting of the Board, if those members differ in opinion upon any question the decision on the question shall be deferred to a meeting of the Board at which all three members thereof are present. Deadlock.

(5) Subject to this Act the Board may regulate its own proceedings. Proceedings of Board.

(6) The functions of the Board are— Functions of Board.

- (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 Minister upon any matter submitted by him to the Board for its advice that relates to the operation of this Act.

(7) There may be appointed by the Governor a Secretary to the Board and such other officers as are necessary for carrying out the objects of this Act. Officers of Board.

10. (1) Where an appeal against the decision of a Court in civil proceedings— Power to Supreme Court to grant indemnity certificate.

- (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; or
- (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 to the Court in that behalf, grant to the respondent to the appeal or to all or any of several respondents to the appeal an indemnity certificate in respect of that appeal.

(2) The jurisdiction conferred upon the Supreme Court by subsection (1) of this section may be exercised by a judge sitting in chambers.

Certificate of indemnity entitles respondent to costs from the Fund.

11. (1) Subject to this Act, where a respondent to an appeal has been granted an indemnity certificate, the certificate entitles 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 indemnity 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 of indemnity was granted,

ordered to be paid and actually paid by the respondent;

(b) an amount equal to the respondent's 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 an 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 subsection are taxed at the instance of the respondent an amount equal to the costs incurred by the respondent in having the costs taxed.

(2) Where an indemnity certificate has been granted, and the Board is satisfied—

(a) 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 subsection (1) of this section or any part of those costs; or

- (b) that payment of those costs or part of those costs would cause the respondent undue hardship; or
- (c) that the respondent cannot be found and the costs or part of those costs have not already been paid by the respondent and the certificate of taxation in respect thereof is produced to the Board,

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 is entitled to payment from the Fund in accordance with the direction of the Board and the Fund is 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 the foregoing provisions of this section—

- (a) the aggregate of the amounts payable from the Fund pursuant to paragraphs (b) and (c) of subsection (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of that subsection; and
- (b) the amount payable from the Fund to any one respondent pursuant to an indemnity certificate shall not in any case exceed the sum of five hundred pounds or such other amount as may from time to time be prescribed.

12. (1) An indemnity certificate granted to a respondent in respect of an appeal, being an appeal in a sequence of appeals, is vacated if—

Indemnity
certificate
vacated in
certain
circum-
stances.

- (a) in a later appeal in the sequence the successful party to the appeal is the one to whom the indemnity certificate was 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.

(2) An indemnity certificate granted to a respondent in respect of an appeal—

- (a) where a time is limited for appealing against the decision in the appeal, is inoperative during the time so limited;
- (b) where a time is not limited for appealing against the decision in the appeal, is inoperative until an application for leave to appeal against that decision has been determined and where leave to appeal is granted, until the appeal is instituted, or until the respondent lodges with the Board a written undertaking by him that he will not apply for leave to appeal or appeal against the decision in the appeal, whichever first happens; and
- (c) is, where the decision in the appeal is the subject of an appeal, inoperative during the pendency of the appeal notwithstanding the foregoing provisions of this subsection.

(3) Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under subsection (1) of this section, any reference in subsection (2) of this section—

- (a) 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
- (b) to the pendency of the appeal shall be construed as including a reference to the pendency of the later appeal or of each such later appeal, as the case may be.

(4) (a) Where an undertaking has been given by a respondent under paragraph (b) of subsection (2) of this section and thereafter the respondent

applies for leave to appeal or appeals against the decision in respect of which the undertaking was given, the respondent shall, upon written demand being made in that behalf by the Board, pay to the Board any amount paid to him, or for and on his behalf under the indemnity certificate and in default of payment of the amount by the respondent in accordance with the demand, that amount may be recovered by the Board from the respondent as a debt in any court of competent jurisdiction.

(b) Any amount paid to or recovered by the Board under this subsection shall be paid by it into the Fund.

(5) Nothing in this section affects the operation of subsection (1) of this section.

13. (1) The Supreme Court may grant or refuse an application for an indemnity certificate and no appeal lies against the grant or refusal of the application.

No appeal lies against grant or refusal of indemnity certificate.

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

(3) An indemnity certificate shall not be granted in favour of the Crown or a company or foreign company that has a paid up capital of or equivalent to one hundred thousand pounds or more.

14. (1) Where after the coming into operation of this Act—

Abortive proceedings and new trials after proceedings discontinued.

(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;

- (b) an appeal on a question of law against the conviction of a person (in this section called "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 is 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 any one or more of the parties thereto or their counsel or solicitors, or, in the case of criminal proceedings, of the accused or his counsel or solicitor, and the presiding judge, magistrate or justice grants a certificate, which he is hereby empowered 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 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 counsel or solicitors; 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 counsel or solicitor,

and any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, 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, then the Board may, upon application made to it in that behalf, direct the

payment from the Fund to the party or the accused or the appellant, as the case may be, of the costs or such part thereof, as the Board may determine incurred by the party or the accused or the appellant in the proceedings before they were rendered abortive or the conviction was quashed or the hearing of the proceedings was so discontinued.

(2) An amount shall not be paid from the Fund under this section to the Crown or to a company or foreign company that has a paid up capital of or equivalent to one hundred thousand pounds or more.

15. (1) Where after the coming into operation of this Act, 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 is entitled to be paid from the Fund—

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

(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 but where the Board is satisfied—

- (i) that the respondent unreasonably refuses or rejects or is unable through lack of means to pay the whole of those costs or part thereof; or
- (ii) that payment of those costs or part thereof would cause the respondent undue hardship; or
- (iii) that the respondent cannot be found and the costs or part of those costs have not already been paid by the respondent and the Certificate of Taxation in respect thereof is produced to the Board,

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 is entitled to payment from the Fund in accordance with the direction and the Fund is 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 subsection are taxed at the instance of the respondent an amount equal to the costs incurred by him in having those costs taxed.

(2) Notwithstanding the provisions of subsection (1) of this section—

- (a) the aggregate of the amounts payable from the Fund pursuant to paragraphs (b) and (c) of that subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of that subsection; and
- (b) 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 five hundred pounds or such other amount as may from time to time be prescribed.

(3) This section does not apply where the respondent to the motion for the new trial is the Crown or a company or foreign company that has a paid up capital of or equivalent to one hundred thousand pounds.

Exemption
from
personal
liability.

16. Neither the Board nor a person who is, or has been, a member of the Board is liable in any action or proceeding for anything done or omitted

in good faith, in or in connection with, the exercise or purported exercise of any power conferred, or the carrying out of any duty imposed on the Board by this Act.

17. The Governor may make regulations Regulations. prescribing all matters that by this Act are required or authorised to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act and in particular may make regulations for or with respect to—

- (a) the manner of operating on 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) regulating the preparation and service of bills of costs proposed to be taxed for the purposes of this Act; and
 - (d) prescribing forms for the purposes of this Act.
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