

SUITORS' FUND.

No. 57 of 1971.

AN ACT to amend the Suitors' Fund Act, 1964-1969.

[Assented to 15th December, 1971.]

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. (1) This Act may be cited as the *Suitors' Fund Act Amendment Act, 1971*.

Short title
and citation.

(2) In this Act the Suitors' Fund Act, 1964-1969 is referred to as the principal Act.

Act No. 43 of
1964 as
amended by
Act No. 72 of
1969.

(3) The principal Act as amended by this Act may be cited as the Suitors' Fund Act, 1964-1971.

2. This Act shall come into operation on a date to be fixed by proclamation.

Commence-
ment.

Amendment
to s. 3.
(Interpreta-
tion.)

3. Section 3 of the principal Act is amended—

- (a) by adding after the word “certificate”, in line three of the interpretation “costs” the words “or a costs certificate”; and
- (b) by adding after the interpretation “costs” an interpretation as follows—

“costs certificate” means a costs certificate granted under section twelve A of this Act; .

Amendment
to s. 5.
(Additional
fees to be
paid to the
Fund.)

4. Section 5 of the principal Act is amended—

- (a) by adding after the section number “5.” the subsection designation “(1)”;
- (b) by adding after the word “Court”, in line three of paragraph (a), the words “or the District Court of Western Australia”; and
- (c) by adding a subsection as follows—

(2) The words “or the District Court of Western Australia”, in paragraph (a) of subsection (1) of this section, are deemed to have been included therein on and from the 1st April, 1970. .

Addition of
section 12A.

5. The principal Act is amended by adding after section 12 a section as follows—

Costs
certificates.

12A. (1) Where after the coming into operation of the Suitors' Fund Act Amendment Act, 1971, on an appeal against a conviction for an indictable offence the conviction is quashed without a new trial being ordered, the Supreme Court may, upon application made to it in that behalf, grant to the appellant a costs certificate in respect of the costs of the appeal or such part of those costs as the Court may determine.

(2) Where after the coming into operation of the Suitors' Fund Act Amendment Act, 1971, an appeal on a question of law succeeds and the Court that allowed the appeal would, but for the provisions of some other Act or law, have ordered costs of the appeal, fixed or to be taxed,

or some proportion thereof, to be paid by the respondent—

- (a) that Court shall make a finding to that effect and shall specify the amount of costs it would have fixed or state that it would have directed them to be taxed, or what proportion of the taxed costs it would have ordered to be paid, as the case requires; and
- (b) the Supreme Court may, upon application made to it in that behalf, grant a costs certificate to the appellant and, if so, shall include in it the substance of the finding referred to in paragraph (a) of this subsection.

(3) The jurisdiction of the Supreme Court to grant a costs certificate may be exercised by a judge sitting in chambers.

(4) Subject to this Act, where an appellant has been granted a costs certificate, the certificate shall entitle the appellant to be paid from the Fund—

- (a) if the certificate was granted under subsection (1) of this section—
 - (i) an amount equal to the appellant's costs of the appeal in respect of which the certificate was granted as taxed or agreed upon by the Board and the appellant or the appellant's solicitor, or equal to such part of those costs as the Supreme Court has determined, as the case requires; and
 - (ii) where the costs referred to in subparagraph (i) of this paragraph are taxed, an amount

equal to the costs incurred by the appellant in having those costs taxed; or

(b) if the certificate was granted under subsection (2) of this section—

(i) the amount of costs of the appeal which the Court that allowed the appeal would have ordered to be paid by the respondent; or

(ii) the taxed costs of the appeal, or such proportion of the taxed costs as that Court would have ordered to be paid by the respondent, including the costs incurred by the appellant in having those costs taxed, or in lieu of the taxed costs or that proportion of them an amount agreed upon by the Board and the appellant or the appellant's solicitor,

as the case requires.

(5) The amount payable from the Fund to any one appellant pursuant to a costs certificate shall not in any case exceed the sum of one thousand dollars or such other amount as may from time to time be prescribed. .

Amendment
to s. 13.
(No appeal
lies against
grant or
refusal of
indemnity
certificate.)

6. Section 13 of the principal Act is amended—

(a) by adding after the word "certificate", in line two of subsection (1), the words, "or a costs certificate"; and

(b) by adding after the word "certificate", in line one of subsection (3), the words "or a costs certificate".

7. Section 14 of the principal Act is amended—

Amendment
to s. 14.
(Abortive
proceedings
and new
trials after
proceedings
discon-
tinued.)

- (a) by substituting for the passage “solicitor,” at the end of subparagraph (ii) of paragraph (c) of subsection (1), a passage as follows—

solicitor,

or where after the coming into operation of the Suitors' Fund Act Amendment Act, 1971—

- (d) a criminal proceeding in any court is adjourned by or on behalf of the prosecution and the presiding judge, magistrate or justice grants a certificate, which he is hereby empowered to grant if he is satisfied that by reason of the adjournment the accused has necessarily incurred expense, to the accused stating the reason why the proceedings were adjourned and that the reason was not attributable in any way to the act, neglect or default of the accused or his counsel or solicitor; ;
- (b) by adding after the word “trial”, in line fifty-one of subsection (1), the words “or as a consequence of the adjournment”;
- (c) by adding after the word “abortive”, in the third last line of subsection (1), the words “or were adjourned”; and
- (d) by adding after subsection (1) subsections as follows—

(1a) For the purposes of this section a criminal proceeding is deemed to have been adjourned where the prosecution has notified the accused or his counsel or solicitor that a date has been fixed for the hearing of the proceedings and the proceeding is, without his consent, not listed for hearing on that day.

(1b) An application for a certificate under subsection (1) of this section with respect to the adjournment of a criminal proceeding may be made when the proceedings come on for hearing and a certificate may then be granted in accordance with the provisions of paragraph (d) of subsection (1) of this section. .

Amendment
to s. 15.
(New trial on
ground that
damages
awarded are
excessive or
inadequate.)

8. Section 15 of the principal Act is amended—

- (a) by substituting for the word “rejects”, in line two of subparagraph (i) of paragraph (a) of subsection (1), the word “neglects”;
- (b) by adding after the word “direction”, in the fourth last line of paragraph (a) of subsection (1), the words “of the Board”; and
- (c) by adding after subsection (2) a subsection as follows—

(2a) The provisions of subsections (1) and (2) of this section relating to the entitlement of a respondent to an appeal to be paid from the Fund amounts in respect of costs of an appeal apply, with such modifications as are necessary, where, after the coming into operation of the Suitors' Fund Act Amendment Act, 1971, on an appeal in an action a new trial is not ordered but damages awarded in the action are altered on the ground that they were excessive or inadequate. .

Addition of
s. 15A.

9. The principal Act is amended by adding after section 15 a section as follows—

Subsidiary
and related
corporations.

15A. Notwithstanding any other provision of this Act, where it appears to the Board that a corporation is, under and for the purposes of the Companies Act, 1961, deemed to be a subsidiary of, or related to, another corporation

1971.]

Suitors' Fund.

[No. 57.

that has a paid up capital of or equivalent to two hundred thousand dollars or more, an amount shall not be paid from the Fund to that first mentioned corporation. .
