

SOUTH AUSTRALIA

APPEAL COSTS FUND ACT, 1979

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APPEAL COSTS FUND ACT, 1979

being

Appeal Costs Fund Act, 1979, No. 33 of 1979
[Assented to 15 March 1979]¹

¹ Act not yet in operation.

An Act to establish a fund from which the costs of certain litigation may be defrayed; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title

1. This Act may be cited as the *Appeal Costs Fund Act, 1979*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

"appeal" means—

(a) an appeal to an appellate court;

(b) a motion for a new trial;

or

(c) any other proceedings before an appellate court in the nature of an appeal (including any such proceedings founded upon a prerogative writ):

"appellate action" means—

(a) an appeal from the decision of a court or tribunal;

or

(b) a case stated, or a question of law reserved, by a court or tribunal for the opinion or determination of an appellate court:

"appellate court" means—

(a) the High Court of Australia;

(b) the Supreme Court of South Australia;

(c) the Industrial Court of South Australia;

or

(d) a local court of full jurisdiction:

"costs" of a party to proceedings includes—

(a) costs of any other party to the proceedings that that party has been ordered to pay;

3.

and

(b) the costs of an application for an indemnity certificate:

"court" means—

(a) the Supreme Court of South Australia;

(b) the Industrial Court, or the Industrial Commission, of South Australia;

(c) a local court;

(d) a district criminal court;

(e) a court of summary jurisdiction;

or

(f) the Children's Court of South Australia:

"court fees" means any fees payable to a court in respect of the initiation of proceedings, the taking of any step in proceedings, the filing of any document, the issue of process, or any other prescribed matter:

"indemnity certificate" means a certificate granted in pursuance of this Act.

"tribunal" means any body, by which judicial or administrative powers are exercisable, constituted by Act of the Parliament of the State.

Establishment of fund

4. (1) For the purposes of this Act, there shall be a fund entitled the "Appeal Costs Fund".

(2) The fund shall consist of—

(a) money paid into the fund in pursuance of this Act;

and

(b) income and accretions realized from investment of the fund under this section.

(3) The fund shall be vested in the Crown and administered by the Attorney-General.

(4) The Attorney-General may invest moneys standing to the credit of the fund in any manner approved by the Treasurer.

(5) If in the opinion of the Attorney-General the amount of the fund at any time exceeds the amount reasonably required for the purposes of this Act, he may with the concurrence of the Treasurer, apply the excess for any of the following purposes:—

(a) providing legal assistance;

4.

(b) funding research with a view to reform of the law;

or

(c) any other purpose approved by the Attorney-General with the concurrence of the Treasurer.

Accounts and audit

5. (1) The Attorney-General shall cause proper accounts to be kept in relation to the fund.

(2) The Auditor-General may at any time, and shall at least once in each financial year, audit the accounts of the fund.

(3) For the purposes of the audit, the Auditor-General shall have, and may exercise, in relation to the accounts of the fund, and the officers concerned in the administration of the fund, the same powers as are vested by the *Audit Act, 1921-1975*, in the Auditor-General in relation to public accounts and accounting officers.

Payment of moneys into fund

6. (1) The Treasurer shall pay into the fund, at times determined by the Attorney-General, an amount equal to—

(a) the prescribed percentage of the revenue derived during a period specified by the Attorney-General from payment or partial payment of court fees;

and

(b) the prescribed percentage of the revenue derived during a period specified by the Attorney-General from payment or partial payment of fines.

(2) The Attorney-General may, by notice published in the *Gazette*, exempt any revenue derived from court fees or fines of a class specified in the notice, from the operation of subsection (1) of this section.

Costs

7. (1) Where an appeal upon a question of law succeeds, a certificate may be granted to any party to the appeal certifying that his taxed costs (including costs relating to any previous appellate action before an inferior appellate court) are, to an extent specified in the certificate, payable from the fund.

(2) Where—

(a) a case is stated by a court or tribunal for the opinion of an appellate court;

or

5.

- (b) a question of law is reserved by a court or tribunal for the determination of an appellate court,

then, upon the determination of the proceedings, a certificate may be granted to any party to the proceedings certifying that his taxed costs are, to an extent specified in the certificate, payable from the fund.

(3) A certificate may be granted under subsection (1) or subsection (2) of this section—

- (a) by the appellate court by which the appeal or other proceedings were determined;

or

- (b) by the Supreme Court.

(4) The total amount that may be certified as payable from the fund in respect of an appellate action and all previous appellate actions arising from the same proceedings shall not exceed five thousand dollars.

(5) For the purposes of this section, two or more appellate actions that are consolidated, shall for the purposes of this section be deemed to constitute a single appellate action.

(6) Where an indemnity certificate is granted under this section upon determination of an appellate action, and an appeal is commenced, or leave to appeal is sought, against the decision of the appellate court, the indemnity certificate shall by force of this section be cancelled but it shall revive—

- (a) if the appeal, or the application for leave to appeal, is withdrawn or lapses;

or

- (b) if the application for leave to appeal is refused.

Grant of indemnity certificate by court of first instance

8. (1) Where—

- (a) any civil or criminal proceedings commenced before a court are rendered abortive by the death, retirement or illness of the judge before whom they were commenced;

- (b) a court before which criminal proceedings have been commenced discontinues the hearing of those proceedings by reason of a default on the part of the counsel or solicitor for the Crown and costs are not awarded against the Crown;

- (c) a court before which civil or criminal proceedings have been commenced discontinues the hearing of those proceedings for a reason that is not attributable to the act or default of any party to the proceedings, or of the counsel or solicitor of any party to the proceedings;

or

6.

- (d) a court refuses to sanction the compromise of an action brought on behalf of an infant plaintiff, and on trial of the action the amount recovered by the plaintiff does not exceed the amount that the defendant had offered to pay under the compromise,

the court before which the proceedings were commenced may certify that the taxed costs of any party to the proceedings are, to an extent specified in the certificate, payable from the fund.

(2) A certificate shall not be granted in respect of the proceedings referred to in paragraph (a), (b) or (c) of subsection (1) of this section unless there is a subsequent trial of the proceedings.

(3) The total amount that may be certified as payable from the fund in respect of any proceedings under this section shall not exceed five thousand dollars.

Grant or refusal of indemnity certificate to be at discretion of court

9. The grant or refusal of an indemnity certificate lies in the discretion of the court to which the application is made, and no appeal lies from the grant or refusal of an indemnity certificate.

Indemnity certificate not to be issued in certain cases

10. (1) No indemnity certificate shall be granted under this Act in respect of—

- (a) proceedings commenced before the commencement of this Act;

or

- (b) any appellate action arising from any such proceedings.

(2) No indemnity certificate shall be granted in favour of the Crown.

Payment from the fund

11. (1) The Attorney-General shall on or before the thirtieth day of June, and the thirty-first day of December, in every year pay from the fund any amounts certified as payable from the fund by indemnity certificates lodged with him not less than six weeks beforehand.

(2) Where the amount in the fund is not sufficient to cover the total amount for which the certificates mentioned in subsection (1) of this section have been granted, the amount of the fund shall be divided between the various claimants in proportion to the amounts of their respective claims.

Regulations

12. The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.