



Queensland

*Appeal Costs Fund Act 1973*

# **Appeal Costs Fund Regulation 2010**

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Queensland

# Appeal Costs Fund Regulation 2010

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# Appeal Costs Fund Regulation 2010

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Appeal Costs Fund Regulation 2010*.

### 2 Rounding of amounts expressed as numbers of fee units

- (1) This section applies for working out the amount of a fee expressed in this regulation as a number of fee units.
- (2) For the purpose of the *Acts Interpretation Act 1954*, section 48C(3), the amount is to be rounded—
  - (a) if the result is not more than \$100—to the nearest multiple of 5 cents (rounding one-half upwards); or
  - (b) if the result is more than \$100 but not more than \$1,000—to the nearest multiple of 10 cents (rounding one-half upwards).

*Example for paragraph (a)—*

If a fee were 35 fee units and the value of a fee unit were \$1.015, the number of dollars obtained by multiplying 35 by \$1.015 would be \$35.525. Because \$35.525 is halfway between \$35.50 and \$35.55, it is rounded upwards, so the amount of the fee would be \$35.55.

## Part 2 Additional fees on documents

### 3 Additional fees on documents commencing legal proceedings

The additional fees payable under section 10 of the Act are stated in schedule 1.

#### **4 Person may apply for exemption from fee**

- (1) An individual may apply to the proper officer of the Supreme Court or the District Court for an order exempting the individual from payment of a fee stated in schedule 1.
- (2) The proper officer may, by order, exempt the individual from payment of the fee if the proper officer considers that, having regard to the individual's financial position, it is clearly in the interests of justice to make the order.
- (3) The proper officer may decide the application summarily and without extensive investigation.
- (4) In having regard to the individual's financial position, the proper officer must have regard to the following matters—
  - (a) if the individual receives an income-tested pension under the *Social Security Act 1991* (Cwlth), the type and amount of the pension;
  - (b) how much the individual is paying as rent for his or her accommodation;
  - (c) whether a spouse or close relative may be willing to give the individual financial help;
  - (d) any other matter the proper officer considers relevant.
- (5) The individual, if dissatisfied with the proper officer's decision on the individual's application, may apply for a review of the decision to—
  - (a) if the court is the Supreme Court, a Supreme Court judge; or
  - (b) if the court is the District Court, a District Court judge.
- (6) On an application for a review of the proper officer's decision, the judge conducting the review may—
  - (a) consider the application with or without a hearing; and
  - (b) consider anything the proper officer considered under subsection (4); and
  - (c) make the order the judge considers appropriate.

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## **Part 3**                      **Claims under indemnity certificates**

### **5**            **How to claim payment out of the fund under an indemnity certificate**

To claim payment out of the fund under an indemnity certificate issued by a court, a claimant must—

- (a) apply, in the approved form, to the board for a certificate authorising payment out of the fund of the amount claimed; and
- (b) lodge the following documents with the application—
  - (i) the indemnity certificate;
  - (ii) a copy of any court order relied on;
  - (iii) any order of the registrar stating the amount at which a costs statement has been assessed, for part or all of the costs claimed;
  - (iv) an itemised bill of costs for any other costs claimed;
  - (v) for an indemnity certificate under section 15 of the Act—a copy of a receipt, or other documents, evidencing any payment of costs, by or on behalf of the respondent, relied on;
  - (vi) if payment of an appellant’s costs is claimed under section 16(2) of the Act—sworn evidence of the respondent’s failure to pay the appellant’s costs;
  - (vii) for an indemnity certificate granted to a person under section 20B of the Act—a copy of a receipt, or other documents, evidencing any payment of costs, by or on behalf of the person, relied on;
  - (viii) for an indemnity certificate granted to a convicted person under section 20D of the Act—a copy of a receipt, or other documents, evidencing any

[s 6]

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payment of costs, by or on behalf of the convicted person, relied on;

- (ix) sworn evidence of any other facts relied on.

## **Part 4**

# **Claims under the Act, section 22 or 23**

### **6 How to claim payment out of the fund under the Act, s 22**

To claim payment from the fund under section 22 of the Act, a claimant must—

- (a) apply, in the approved form, to the board for a certificate authorising payment out of the fund of the amount claimed; and
- (b) lodge the following documents with the application—
  - (i) a copy of any order or transcript evidencing a fact mentioned in section 22(2)(a) of the Act;
  - (ii) a copy of any order, for a new trial, mentioned in section 22(2)(b) of the Act;
  - (iii) if the order does not show it was made on an appeal on a question of law—a copy of any transcript showing that fact;
  - (iv) any certificate granted under section 22(2)(c) of the Act;
  - (v) an itemised bill of costs for all costs relating to the claimant of the original trial and of the new trial that identifies each cost of the original trial thrown away or partly thrown away;
  - (vi) a copy of any order to pay additional costs of a new trial;
  - (vii) a copy of a receipt, or other documents, relied on to show the payment of any additional costs of a new trial;



(viii) sworn evidence of any other facts relied on.

## **7 How to claim payment out of the fund under the Act, s 23**

To claim payment from the fund under section 23 of the Act, a claimant must—

- (a) apply, in the approved form, to the board for a certificate authorising payment out of the fund of the amount claimed; and
- (b) lodge the following documents with the application—
  - (i) a copy of the order for a new trial;
  - (ii) if the order does not show the grounds for the order and the claim relates to costs mentioned in section 23(1) of the Act—a copy of any transcript showing the grounds;
  - (iii) a copy of any order, for costs, mentioned in section 23(1)(a) of the Act;
  - (iv) any order of the registrar stating the amount at which a costs statement has been assessed, for part or all of the costs claimed;
  - (v) an itemised bill of costs for all other costs claimed;
  - (vi) a copy of a receipt, or other documents, relied on to show the payment of any costs by or on behalf of the respondent;
  - (vii) sworn evidence of any other facts relied on.

## **Part 5 Provisions about the board**

### **8 Board may require additional evidence from claimant**

The board may require a person claiming payment out of the fund to give the board any additional evidence it considers reasonably necessary to decide the claim.

## **9 Certificates of the board**

A certificate of the board under section 14 of the Act must—

- (a) be in the approved form; and
- (b) state the amount the person named in the certificate is entitled to be paid from the fund; and
- (c) state whether the payment is to be made to the person or the person's solicitor; and

*Note—*

See section 25 (Payment to solicitor) of the Act.

- (d) authorise payment of the amount out of the fund; and
- (e) be signed by the chairperson of the board or by a board member authorised by the board to sign certificates issued under section 14 of the Act.

## **10 Duties of secretary**

The duties of the secretary of the board (the *secretary*) include—

- (a) keeping a register of all applications made to the board for payment out of the fund; and
- (b) keeping minutes of meetings of the board; and
- (c) ensuring that accounts about claims on the fund are prepared as directed by the board; and
- (d) conducting correspondence and other business as directed by the board.

## **11 Registrars to produce documents to board on request**

- (1) For the purposes of the Act, the board may request a court's registrar to produce, or send, to the board a stated file or document.
- (2) The request must be signed by the secretary or someone else authorised by the board to make a request under this section.

- (3) The registrar must comply with the request (subject to any present need of the court for the file or document first being satisfied).
- (4) The board must return the file or document to the registrar when the board is finished with it.
- (5) In this section—  
*registrar* includes the clerk of a Magistrates Court.

## **12 Fees payable to board members—Act, s 6(6)**

- (1) The fees payable to members of the board are in schedule 2.
- (2) However, a board member who is a public service officer is not entitled to a fee.
- (3) If a fee payable is for a supply on which GST is payable, the fee is to be increased to take account of the GST.

## **Part 6 Miscellaneous**

### **14 Prescribed limits on amounts payable**

- (1) For section 16(3) of the Act, the prescribed amount is \$15,000.
- (2) For section 18(2) of the Act, the prescribed amount is \$750.
- (3) For section 20C(2) of the Act, the prescribed amount is \$15,000.
- (4) For section 20E(2) of the Act, the prescribed amount is \$15,000.
- (5) For section 23(2)(c) of the Act, the prescribed amount is \$15,000.
- (6) For section 24(2)(c) of the Act, the prescribed amount is \$15,000.

## 15 Repeal

The Appeal Costs Fund Regulation 1999, SL No. 134 is repealed.

## Part 7 Transitional provisions

### 16 Definitions for pt 7

In this part—

*commencement* means the commencement of this section.

*repealed*, of a section, means the section as in force immediately before the commencement.

### 17 Transitional provision for application for exemption under s 4

If, before the commencement—

- (a) an application has been made for an exemption from payment of a fee under repealed section 4(2); and
- (b) the proper officer has not decided the application under repealed section 4(3) and (4);

the application is taken to have been brought under section 4.

### 18 Transitional provision for application for payment out of fund under indemnity certificate under repealed s 5

If, before the commencement—

- (a) an application has been made under repealed part 3 or part 4 to the board for a certificate authorising payment out of the fund of the amount claimed; and
- (b) part or all of the claimed payment has not been made or refused;

the application is taken to have been brought under part 3 or part 4.

**19 Transitional provision—references to repealed Appeal Costs Fund Regulation 1999**

In a document, a reference to the repealed *Appeal Costs Fund Regulation 1999* may, if the context permits, be taken as a reference to this regulation.

**20 Transitional provision—approved forms under repealed Appeal Costs Fund Regulation 1999**

- (1) This section applies if, immediately before the commencement of section 13, a form was approved for a purpose under the repealed *Appeal Costs Fund Regulation 1999*.
- (2) The form is taken to have been approved under section 13 for the equivalent purpose under this regulation.
- (3) Subsection (2) applies only until another form is approved under section 13 for the purpose or 1 October 2010, whichever happens first.

## **Schedule 1      Additional fees on documents**

section 3

	<b>Fee units</b>
On the issue of a document commencing—	
(a) a cause or matter in the Supreme Court	29.90
(b) a proceeding in the District Court	22.85
(c) a proceeding in a Magistrates Court	3.95

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## Schedule 2      Fees payable to board members

### section 12

#### Fee units

For attending a meeting of the board—

(a) meeting of 2 hours or less—

- chairperson 76.75
- other board member 53.40

(b) meeting of over 2 hours but not over 4 hours—

- chairperson 115.70
- other board member 76.75

(c) meeting of over 4 hours—

- chairperson 154.70
- other board member 102.80