

Appeal Costs Fund Regulation 2024

Explanatory notes for SL 2024 No. 82

Made under the

Appeal Costs Fund Act 1973

General Outline

Short title

Appeal Costs Fund Regulation 2024

Authorising law

Section 26 of the *Appeal Costs Fund Act 1973*

Policy objectives and the reasons for them

The *Appeal Costs Fund Act 1973* (ACF Act) establishes, and provides for the administration of, the Appeal Costs Fund (Fund) to assist in the payment of legal costs incurred by litigants through no fault of their own, for example, where:

- any civil or criminal proceedings are rendered abortive by the death or illness of the relevant judicial officer; and
- an appeal on a question of law, or on the ground of a miscarriage of justice, against the conviction of a person convicted on an indictment succeeds and a new trial is ordered.

The Fund is administered by an Appeal Costs Board (Board), constituted under the ACF Act.

The *Justice and Other Legislation Amendment Act 2023* (JOLA Act), which received assent on 20 September 2023, amended the ACF Act to:

- modernise the Act and improve its current fee and administrative arrangements;
- provide that Legal Aid Queensland may no longer receive payments from the Fund;
- remove categories of claim on the Fund under section 15 (compensation from the Fund following a successful civil appeal based on a question of law) and section 17 (relating to claims in limited circumstances on a successful appeal from a decision of a Magistrates Court);
- provide for a one-year period to apply for payment from the Board after an indemnity certificate for the payment is granted; or, if a person is entitled to the payment

- without the grant of an indemnity certificate, the day on which the entitlement arises (an application outside of the one year period may be allowed by the Board); and
- streamline the fees payable under the ACF Act by removing them from the ACF Act and combining them with certain originating process fees under the the *Justices Regulation 2014* and the *Uniform Civil Procedure (Fees) Regulation 2019*.

The *Appeal Costs Fund Regulation 2010* (2010 Regulation) prescribes various matters to support the operation of the ACF Act and to provide for how the provisions of the ACF Act are to be applied. The 2010 Regulation prescribes: how to make a claim; the maximum amounts payable from the Fund; and the requirement that applications to the Board for payment from the Fund must be in the approved form and accompanied by the prescribed documents.

The 2010 Regulation also contains provisions relating to the functions of the Board, including allowing the Board to require further information from a claimant and a court's registrar that it reasonably requires to decide a claim; and prescribing the fees payable to Board members.

The *Appeal Costs Fund Regulation 2024* (Regulation) repeals and replaces the 2010 Regulation in substantially the same form, with minor changes to reflect current drafting practices and administrative processes, and to clarify existing provisions.

The Regulation also incorporates the following consequential amendments arising from the changes to the ACF Act under the JOLA Act:

- omitting the additional fees provisions and the prescribed additional fees on documents provided for under the 2010 Regulation to reflect the removal of the additional fee from the ACF Act on 1 July 2024; and
- omitting the provisions under the 2010 Regulation related to the categories of claims on the Fund previously provided for under sections 15 and 17 of the ACF Act, to reflect the removal of those provisions from the ACF Act on 20 September 2023.

Achievement of policy objectives

The Regulation achieves its objectives by continuing to prescribe various matters to support the operation of the ACF Act and to provide for how the provisions of the ACF Act are to be applied.

The Regulation will commence on 1 July 2024.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the ACF Act.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The benefits of implementing the Regulation are to ensure the continued effective and efficient operation of the ACF Act.

No significant costs impacts are expected.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

Relevant Heads of Jurisdiction, the Board, the Bar Association of Queensland, and the Queensland Law Society were consulted on a consultation draft of the Regulation.