



# Appeal Costs Fund Act 1973

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Queensland

# Appeal Costs Fund Act 1973

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# Appeal Costs Fund Act 1973

**An Act to make provision with respect to liability for the costs of certain litigation, to establish a fund to meet that liability and for purposes connected therewith**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Appeal Costs Fund Act 1973*.

### 2 Commencement of Act

This Act shall commence on a date appointed by proclamation.

### 4 Interpretation

In this Act—

*appeal* includes an order to review, a case stated for the opinion or determination of a superior court on a question of law, a question of law reserved in the form of a special case for the opinion of a superior court, a motion for a new trial and any other proceeding in the nature of an appeal.

*appellant* includes the next friend of an infant or person under disability or the guardian *ad litem* of any person.

*approved form* means a form approved under section 25A.

*assessed*, in relation to costs, includes taxed.

*board* means the Appeal Costs Board constituted under this Act.

[s 5]

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**costs**, in relation to an appeal, include the costs of an application for an indemnity certificate in respect of an appeal but do not include costs incurred in a court of first instance except where otherwise expressly provided.

**court** includes any board, other body or person from whose decision there is an appeal to a superior court on a question of law or which may state a case for the opinion or determination of a superior court on a question of law or reserve any question of law in the form of a special case for the opinion of a superior court.

**fund** means the Appeal Costs Fund established under this Act.

**guideline proceeding** see the *Penalties and Sentences Act 1992*, section 15AA.

**indemnity certificate** means an indemnity certificate granted under this Act.

**proper officer**, used in relation to a court, means—

- (a) in the case of the Supreme Court or the District Court—the registrar;
- (b) in the case of a Magistrates Court—the clerk of the court.

**respondent** includes the next friend of an infant or person under disability or the guardian *ad litem* of any person.

**sequence of appeals** means a sequence of appeals in which each appeal that follows next after another appeal in the sequence is an appeal against the decision in that other appeal.

## Part 2 Appeal Costs Fund and board

### 5 Appeal Costs Fund

- (1) The Appeal Costs Fund is continued in existence.

- (2) Accounts for the fund must be kept as part of the departmental accounts of the department.
- (3) Amounts received for the fund must be deposited in a departmental financial-institution account of the department but may be deposited in an account used for depositing other amounts of the department.
- (4) The amounts received for the fund are amounts paid to the department as part of its vote under the *Financial Accountability Act 2009* and made available by the department for use under this Act.
- (5) The amounts referred to in subsection (6) and sections 6(6) and (8), 9, 20C, 20E, 22, 23 and 24, the costs of the staff employed under section 9 and the administration of this Act shall be paid out of the fund.
- (6) In addition to any amount expressed by this Act to be payable out of the fund in any case, the board may allow such amount as it thinks fit to a party to any proceedings for the party's costs of making application to the board under this Act and where the board allows those costs it shall include the amount thereof in any certificate referred to in section 14.
- (7) In this section—

*departmental accounts*, of a department, means the accounts of the department under the *Financial Accountability Act 2009*, section 69.

*departmental financial-institution account*, of a department, means an account of the department kept under the *Financial Accountability Act 2009*, section 83.

*other amounts*, of a department, means amounts received by the department other than amounts received for the fund.

## 6 Appeal Costs Board

- (1) For the purposes of this Act there shall be constituted a board to be called the *Appeal Costs Board*.

- (2) The board shall consist of 3 members who shall be appointed by the Minister, namely—
  - (a) a chairperson; and
  - (b) a member representative of and nominated in writing by the Bar Association of Queensland; and
  - (c) a member representative of and nominated in writing by the Queensland Law Society Incorporated.
- (3) If either body entitled under subsection (2) to nominate a person to be a member of the board fails within 28 days after a request in writing in that behalf by the Minister to submit a nomination, the Minister may without that nomination appoint a person who is in the opinion of the Minister a suitable person, as a member of the board to represent the interests of the body concerned, and the person so appointed shall be deemed to be duly appointed for all purposes.
- (4) The Minister may at any time remove a member of the board from office and appoint another member in the member's stead.
- (5) Members of the board shall hold office for such term not exceeding 3 years as the Minister determines and are eligible for reappointment.
- (6) A member of the board is to be paid the fees and allowances prescribed under a regulation.
- (7) For the purposes of an inquiry under this Act, the board shall have and may exercise all the powers, authorities, protection and jurisdiction of a Commission of Inquiry under the *Commissions of Inquiry Act 1950* and the chairperson or member presiding at any such inquiry shall have the powers and authorities, protection and jurisdiction of a chairperson of a Commission under that Act save such as are reserved to a chairperson who is a judge of the Supreme Court, and the provisions of that Act shall apply accordingly and in addition shall apply to any witness or person summoned by or appearing before the board in any such inquiry.



- (8) The expenses of a witness before the board or a person required to produce documents to the board shall be paid out of the fund.

## **7 Meetings of board**

- (1) The chairperson shall preside at all meetings of the board at which chairperson is present.
- (2) Two members of the board shall form a quorum but subject to there being a quorum the board may act notwithstanding any vacancy in its membership.
- (3) The decision upon any matter of the majority of members at a meeting shall be the decision of the board.
- (4) If at a meeting of the board at which 2 members only are present the members differ in opinion upon any matter, the decision on that matter shall be deferred to a meeting of the board at which all 3 members are present.
- (5) Subject to this Act, the board may regulate its own proceedings.

## **8 Functions of board**

The functions of the board are—

- (a) to exercise and discharge the powers, authorities, duties, functions and obligations conferred or imposed on it by or under this Act;
- (b) to advise the Minister upon any matter submitted by the Minister to it relating to the operation of this Act.

## **9 Secretary and staff**

- (1) There may be a secretary, and staff, of the board.
- (2) The secretary and staff are to assist the board to perform the board's functions.

- (3) The secretary and staff of the board are employed under the *Public Sector Act 2022*.

## **Part 3                      Payments**

### **14            Payments out of fund**

- (1) Payments shall not be made out of the fund except upon and in accordance with a certificate of the board.
- (2) The board shall not issue a certificate pursuant to subsection (1) unless it is satisfied that the payment is authorised by this Act to be made from the fund and that the provisions of this Act in relation to a claim for the payment have been complied with.

### **14A        Time limit for applying to board for payment**

- (1) The board must not issue a certificate to a person under section 14(1) for a payment from the fund unless the person applies to the board for a certificate under this section.
- (2) An application must be made within 1 year after—
  - (a) the day an indemnity certificate for the payment is granted; or
  - (b) if the person is entitled to the payment without the grant of an indemnity certificate—the day on which the entitlement arises.
- (3) However, the board may accept an application made after the time required under subsection (2) if the board is satisfied it would be reasonable to do so, having regard to—
  - (a) the length of the delay; and
  - (b) the reasons for the delay; and
  - (c) the likely financial and other consequences for the person if the certificate is not granted; and

- (d) any other relevant matter.

## Part 4                      Guideline proceedings

### 20A      Definitions for part

In this part—

*court* means the Court of Appeal.

*guideline judgment* see the *Penalties and Sentences Act 1992*, section 4.

### 20B      Grant of indemnity certificate to person on appeal after conviction

- (1) This section applies if on an appeal after a person is convicted—
  - (a) the person applies to the court for review of a guideline judgment under the *Penalties and Sentences Act 1992*, section 15AE(3); and
  - (b) if the person made the appeal—the appeal succeeds.
- (2) The court may, on application by the person, grant to the person an indemnity certificate in respect of that part of the appeal relating to the review of the guideline judgment.
- (3) The court may grant the certificate despite no order as to costs being made or allowed.

### 20C      Effect of indemnity certificate under s 20B

- (1) If a person is granted an indemnity certificate under section 20B in respect of that part of an appeal relating to a review of a guideline judgement, the certificate entitles the person to be paid from the fund—

[s 20D]

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- (a) an amount equal to the additional costs incurred by the person on the appeal for which the certificate was granted, as assessed or agreed on by—
    - (i) the board; and
    - (ii) the respondent or the respondent’s solicitor; and
    - (iii) the appellant or the appellant’s solicitor; and
  - (b) if the costs referred to in paragraph (a) are assessed—an amount equal to the costs incurred by the person, or on the person’s behalf, in having those costs assessed.
- (2) Despite subsection (1), the amount payable from the fund to any 1 person under any 1 indemnity certificate must not be more than the amount prescribed under a regulation.
  - (3) In this section—

***additional costs***, incurred by a person on an appeal, means the costs beyond what the person would otherwise have incurred had the appeal not included a review of a guideline judgment.

## **20D Grant of indemnity certificate to convicted person**

- (1) This section applies if a convicted person appears in a guideline proceeding relevant to an appeal before the court against the sentence of the convicted person under the *Penalties and Sentences Act 1992*, section 15AF(2).
- (2) The court may, on application by the convicted person, grant to the convicted person an indemnity certificate in respect of that part of the appeal relating to the guideline proceeding.
- (3) The court may grant the certificate despite no order as to costs being made or allowed.

## **20E Effect of indemnity certificate under s 20D**

- (1) If a convicted person is granted an indemnity certificate under section 20D in respect of that part of an appeal relating to a guideline proceeding, the certificate entitles the convicted person to be paid from the fund—

- (a) an amount equal to the additional costs incurred by the convicted person on the appeal for which the certificate was granted, as assessed or agreed on by—
    - (i) the board; and
    - (ii) the respondent or the respondent’s solicitor; and
    - (iii) the appellant or the appellant’s solicitor; and
  - (b) if the costs referred to in paragraph (a) are assessed—an amount equal to the costs incurred by the convicted person, or on the convicted person’s behalf, in having those costs assessed.
- (2) Despite subsection (1), the amount payable from the fund to any 1 person under any 1 indemnity certificate must not be more than the amount prescribed under a regulation.
  - (3) In this section—

*additional costs*, incurred by a convicted person on an appeal, means the costs beyond what the convicted person would otherwise have incurred had the appeal not included a guideline proceeding.

## **21 Discretion as to indemnity certificate**

- (1) The grant or refusal of an indemnity certificate lies in the discretion of the Court of Appeal, the Supreme Court or the District Court, as the case may be, and no appeal lies against any such grant or refusal.
- (2) An indemnity certificate shall not be granted in respect of any appeal from proceedings begun in a court of first instance before the commencement of this Act.
- (3) An indemnity certificate shall not be granted in favour of the Crown.

## Part 5 Miscellaneous provisions

### 22 Abortive proceedings and new trials after proceedings discontinued

- (1) This section does not apply to a guideline proceeding.
- (2) Where after the commencement of this Act—
  - (a) any civil or criminal proceedings are rendered abortive by the death or illness of the judge, master, magistrate or justice before whom the proceedings were had or in the case of proceedings had before the Industrial Court on appeal, of any member of that court or by disagreement on the part of the jury where the proceedings are with a jury; or
  - (b) an appeal on a question of law, or on the ground there was a miscarriage of justice, against the conviction of a person (the *appellant*) convicted on indictment succeeds, and a new trial is ordered; or
  - (c) a subsequent appeal against the conviction of a person (also the *appellant*) convicted on indictment succeeds, and a new trial is ordered; or
  - (d) the hearing of any civil or criminal proceeding is discontinued and a new trial 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 any of the parties thereto or their legal representatives, or, in the case of criminal proceedings, of the accused or the accused's legal representatives, and the relevant judge, relevant magistrate or relevant justice grants a certificate (which certificate the relevant judge, relevant magistrate or relevant justice is hereby authorised 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

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act, neglect or default of any of the parties to the proceedings or their legal representatives; 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 the accused's legal representatives;

any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, who pays or is ordered to pay additional costs or on whose behalf additional costs are paid or ordered to be paid by reason of the new trial shall be entitled to be paid from the fund the costs the board considers have been thrown away or partly thrown away by the person or on the person's behalf in the proceedings.

- (3) For subsection (2), costs *thrown away* in relation to proceedings include costs that are reasonably incurred before, but are wasted when—
- (a) the proceedings are rendered abortive; or
  - (b) the conviction is quashed; or
  - (c) the hearing of the proceedings is discontinued.
- (4) No amount shall be paid from the fund under this section to the Crown.
- (5) For the purposes of this section, where in criminal proceedings a presiding judge, magistrate or justice directs that the proceedings being heard be discontinued with a view to other criminal proceedings based on the facts alleged against the accused being instituted, it shall be deemed that a new trial is ordered.
- (6) In this section—
- relevant judge*, in relation to a civil or criminal proceeding, means—
- (a) the presiding judge of the court in which the proceeding was heard; or

- (b) another judge of the court, if—
  - (i) it is not reasonably practicable for the presiding judge to grant a certificate under subsection (2)(d) because of illness; or
  - (ii) the presiding judge has stopped being a judge of the court or has died.

*relevant justice* means—

- (a) the presiding justice; or
- (b) another justice, if—
  - (i) it is not reasonably practicable for the presiding justice to grant a certificate under subsection (2)(d) because of illness; or
  - (ii) the presiding justice has stopped being a justice or has died.

*relevant magistrate* means—

- (a) the presiding magistrate; or
- (b) another magistrate, if—
  - (i) it is not reasonably practicable for the presiding magistrate to grant a certificate under subsection (2)(d) because of illness; or
  - (ii) the presiding magistrate has stopped being a magistrate or has died.

*subsequent appeal* see the Criminal Code, section 668(1).

## **22A Entitlement where point of law referred under s 669A(2) of Code**

Where pursuant to section 669A(2)(b) of the Criminal Code a point of law is referred to the Court of Appeal for its consideration and opinion thereon, the accused in the trial at which the point of law arose shall be entitled to be paid from the fund such costs as the board considers have been reasonably incurred by the accused or on the accused's behalf by reason of—



- (a) the proceedings before the Court of Appeal; and
- (b) where a new trial is had as a consequence of the opinion given by the Court of Appeal on the point of law—the trial at which the point of law arose.

## **23 Entitlement on order for new trial on certain grounds**

- (1) Where after the commencement of this Act a new trial is ordered in an action on the ground that the verdict of the jury was against the evidence or the weight of the evidence or that the damages awarded in the action were excessive or inadequate, the respondent to the motion for the new trial shall be entitled to be paid from the fund—
  - (a) an amount equal to the costs (if any) of the appellant in the motion for and upon the new trial ordered to be paid and actually paid by or on behalf of the respondent; and
  - (b) an amount equal to the respondent's costs of the motion for and upon the new trial, as assessed 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) are assessed at the instance of the respondent—an amount equal to the costs incurred by the respondent or on the respondent's behalf in having those costs assessed.
- (2) Notwithstanding subsection (1)—
  - (a) where the board is satisfied that the respondent unreasonably refuses or neglects or is unable through lack of means to pay the whole of the costs referred to in subsection (1)(a) or any part thereof or that payment of those costs or part would cause the respondent undue hardship—the board may direct in writing that an amount equal to those costs or the part thereof not already paid by or on behalf of the respondent be paid from the fund on behalf of the respondent to the appellant, and thereupon the appellant shall be entitled to payment from the fund in accordance with the

direction and the fund shall be discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction;

- (b) where the respondent has been ordered to pay the appellant's costs in the motion for and upon the new trial—the aggregate of the amounts payable from the fund pursuant to subsection (1)(b) and (c) shall not exceed the amount payable from the fund pursuant to subsection (1)(a);
  - (c) the amount payable from the fund to any 1 respondent in respect of the motion for and upon a new trial shall not in any case exceed \$4,000 or such other amount as is prescribed from time to time.
- (3) Where upon any appeal heard after the commencement of this Act a new trial of a cause or matter is ordered upon any ground whatsoever, and upon the new trial the party who was the appellant in the appeal proceedings is ordered to pay the respondent's costs of the new trial, the appellant shall be entitled to be paid from the fund, subject to the limitations contained in subsection (2), the amounts referred to in subsection (1)(a) to (c) which shall for the purposes of this subsection be read and construed as if a reference in those paragraphs to the respondent were a reference to the appellant and a reference to the appellant were a reference to the respondent.
- (4) This section does not apply where the respondent to the motion for the new trial is the Crown.

## **24 Entitlement on refusal of court to sanction compromise**

- (1) Where a court having jurisdiction in that behalf refuses to sanction the compromise of an action brought by an infant plaintiff and on the trial of the action the amount of the judgment obtained by the plaintiff is an amount that is not greater than the amount that the defendant had agreed to pay under the compromise and the infant plaintiff or the infant plaintiff's next friend is ordered to pay the whole or part of the defendant's costs of the action on any ground including the

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payment of money into court by the defendant, the infant plaintiff or the infant plaintiff's next friend, as the case requires, shall be entitled to be paid from the fund—

- (a) an amount equal to the costs ordered to be paid by the infant plaintiff to the defendant and actually paid by or on behalf of the infant plaintiff or the infant plaintiff's next friend; and
  - (b) an amount equal to the infant plaintiff's costs of the action incurred after the date on which the court refused to sanction the compromise, as assessed or agreed upon by the board and the infant plaintiff or his or her next friend or the infant plaintiff's solicitors and not ordered to be paid by any other party; and
  - (c) where the costs referred to paragraph (b) are assessed at the instance of the infant plaintiff or the infant plaintiff's next friend—an amount equal to the costs incurred by the infant plaintiff or on the infant plaintiff's behalf in having those costs assessed.
- (2) Notwithstanding subsection (1)—
- (a) where the board is satisfied that the infant plaintiff or the infant plaintiff's next friend unreasonably refuses or neglects or is unable through lack of means to pay the whole of the costs referred to in subsection (1)(a) or any part thereof or that payment of those costs or part would cause the infant plaintiff or the infant plaintiff's next friend undue hardship—the board may direct in writing that an amount equal to those costs or to the part of those costs not already paid by or on behalf of the infant plaintiff or the infant plaintiff's next friend be paid from the fund for and on behalf of the infant plaintiff or the infant plaintiff's next friend to the defendant, and thereupon the defendant shall be entitled to payment from the fund in accordance with the direction and the fund shall be discharged from liability to the infant plaintiff or the infant plaintiff's next friend in respect of those costs to the extent of the amount paid in accordance with the direction;

[s 24A]

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- (b) the aggregate of the amounts payable from the fund pursuant to subsection (1)(b) and (c) shall not exceed the amount payable from the fund pursuant to subsection (1)(a);
- (c) the amount payable from the fund to any 1 infant plaintiff or the infant plaintiff's next friend shall not in any case exceed \$4,000 or such other amount as is prescribed from time to time.

#### **24A No payments to Legal Aid Queensland or service providers**

The board must not make a payment from the fund—

- (a) to Legal Aid Queensland; or
- (b) to a Legal Aid service provider, in relation to a proceeding for which the Legal Aid service provider gave legal assistance under the *Legal Aid Queensland Act 1997*.

#### **25 Payment to solicitor**

Any amount payable to a person from the fund may, if the board thinks fit, be paid to the person's solicitor and on payment to the person's solicitor the fund shall be discharged from liability to that person in respect of that amount.

#### **25A Approval of forms**

The chief executive may approve forms for use under this Act.

#### **26 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about—
  - (a) the making of payments out of the fund and the fixing of maximum payments out of the fund in a particular case;

- 
- (b) the 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 the party's costs;
  - (c) officers by whom bills of costs may be assessed for the purposes of this Act in different courts or in different jurisdictions of a court;
  - (d) the preparation and service of bills of costs proposed to be assessed for the purposes of this Act;
  - (e) the fees and allowances payable under this Act and the purposes for which those fees and allowances are payable;
  - (f) records to be kept by the proper officer, for the purposes of this Act and the keeping of those records.

## **Part 6                      Transitional provisions**

### **Division 1                      Transitional provision for Court and Civil Legislation Amendment Act 2017**

#### **31                      Court and Civil Legislation Amendment Act 2017**

- (1) This section applies if, before the commencement—
  - (a) a person had an entitlement to a payment from the fund under section 22; and
  - (b) the board had not decided the amount of the payment.
- (2) Section 22, as amended by the *Court and Civil Legislation Amendment Act 2017*, applies in relation to the person's entitlement.

## **Division 2**                      **Transitional provisions for Justice and Other Legislation Amendment Act 2023**

### **32**            **Definitions for division**

In this division—

*amending Act* means the *Justice and Other Legislation Amendment Act 2023*.

*former*, for a provision of this Act, means the provision as in force immediately before the commencement of the amending Act.

### **33**            **Application of former pt 4, div 1 to current appeals and certificates**

Despite its repeal by the amending Act, former part 4, division 1 continues to apply in relation to—

- (a) an appeal started before the commencement; and
- (b) an indemnity certificate granted before the commencement.

### **34**            **Time limit for claiming payments for finalised proceedings**

- (1) This section applies if—
  - (a) a person is entitled to a payment from the fund in relation to a proceeding that was finally dealt with before the commencement; and
  - (b) the person did not apply to the board for a certificate under section 14(1) before the commencement.
- (2) Section 14A applies in relation to the payment as if the reference in section 14A(2) to 1 year were a reference to 2 years.

**35 Payments to Legal Aid Queensland or service providers**

Section 24A does not prevent a payment from the fund to Legal Aid Queensland or a Legal Aid service provider in accordance with a certificate of the board issued before the commencement.

**36 Payment of fees into the fund**

- (1) Despite its repeal by the amending Act, former section 12 continues to apply in relation to amounts paid to the proper officer of a court before the commencement.
- (2) Despite its repeal by the amending Act, former section 13 continues to apply to an amount received by the Minister under former section 12.