

SUITORS' FUND (AMENDMENT) ACT.

Act No. 20, 1959.

An Act to make further provision in respect of the liability for costs of certain litigation; for this purpose to amend the Suitors' Fund Act, 1951, the Legal Assistance Act, 1943, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 19th October, 1959.]

Elizabeth II,
No. 20, 1959.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Suitors' Fund (Amendment) Act, 1959."

Short title,
citation and
commence-
ment.

(2) The Suitors' Fund Act, 1951, as amended by this Act, may be cited as the Suitors' Fund Act, 1951-1959.

(3) The Legal Assistance Act, 1943, as amended by subsequent Acts and by this Act, may be cited as the Legal Assistance Act, 1943-1959.

(4) Section two of this Act shall be deemed to have commenced upon the first day of November, one thousand nine hundred and fifty-one.

2.

Suitors' Fund (Amendment) Act.

No. 20, 1959. 2. The Suitors' Fund Act, 1951, is amended—

Amendment
of Act No. 3,
1951.

Sec. 2.
(Definitions.)

- (a) (i) by omitting from section two the definition of "Costs of the appeal" and by inserting in lieu thereof the following definition :—

"Costs", when used in relation to an appeal, includes—

- (a) the costs of an application to a judge in chambers for an indemnity certificate in respect of the appeal but, except as provided in paragraph (b) of this definition, does not include costs incurred in a court of first instance;
- (b) where the appeal is by way of motion for a new trial, the costs of the first trial;

- (ii) by inserting at the end of the same section the following new definitions :—

"Indemnity certificate" means an indemnity certificate granted under subsection one of section six of this Act.

"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 (being a decision on a question of law) in that other appeal.

"Supreme Court" means the Supreme Court of New South Wales or a judge thereof.
(b)

(b) (i) by inserting in subsection four of section four after the words "the presence" the words ", or by the direction,"; No. 20, 1959.
Sec. 4.

(ii) by inserting at the end of the same section the following new subsection:— (Under Secretary of Department of Attorney-General and Justice to be corporation sole.)

(6) During the absence from whatever cause of the Under Secretary of the Department of the Attorney-General and of Justice the person holding the appointment of Assistant Under Secretary of the Department of the Attorney-General and of Justice has and may exercise and discharge the powers, authorities, duties, functions and obligations conferred and imposed upon the said Under Secretary by this Act.

The appointment of the said Assistant Under Secretary shall be judicially noticed.

(c) by omitting section six and by inserting in lieu thereof the following section:— Subst. sec. 6.

6. (1) Where an appeal against the decision of a court in civil proceedings— Costs of certain appeals.

(a) to the Supreme Court;

(b) to the High Court of Australia from a decision of the Supreme Court;

(c) to the Queen in Council from a decision of the High Court of Australia given in an appeal from a decision of the Supreme Court;

(d) to the Queen in Council from a decision of the Supreme Court,

on a question of law succeeds, the Supreme Court may, upon application made in that behalf, grant to the respondent to the appeal or to any one or more of several respondents to the appeal an indemnity certificate in respect of the appeal.

The jurisdiction conferred upon the Supreme Court by this subsection may be exercised by a judge of the Supreme Court sitting in chambers.

(2)

No. 20, 1959.

(2) Where a respondent to an appeal has been granted an indemnity certificate, the certificate shall entitle the respondent to be paid from the Fund—

(a) an amount equal to the appellant's costs of—

(i) the appeal in respect of which the certificate was granted; and also

(ii) where that appeal is an appeal in a sequence of appeals, any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

ordered to be paid and actually paid by the respondent: Provided that where the Under Secretary of the Department of the Attorney-General and of Justice is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the said Under Secretary may, if so requested by the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and 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) fifty per centum or such other percentage as may be prescribed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette of the amount payable

payable from the Fund pursuant to para- No. 20, 1959.
graph (a) of this subsection or, where no
amount is so payable, an amount equal to
the costs of—

- (i) the appeal in respect of which the certificate was granted; and also
- (ii) where that appeal is an appeal in a sequence of appeals, any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

as taxed, incurred by the respondent and not ordered to be paid by any other party : Provided that where an amount is payable from the Fund pursuant to paragraph (a) of this subsection, but the Under Secretary of the Department of the Attorney-General and of Justice directs that the costs of the appeal or appeals referred to in subparagraph (i) or in subparagraphs (i) and (ii) of this paragraph incurred by the respondent and not ordered to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed; and

- (c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection—

- (i) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, the aggregate of the amounts

No. 20, 1959.

amounts payable from the Fund pursuant to that paragraph and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection;

- (ii) the amount payable from the Fund under or pursuant to any one indemnity certificate shall not in any case exceed the sum of one thousand pounds or such other amount as may be fixed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette.

The Governor may from time to time in like manner vary or revoke any proclamation under this subsection.

(3) An indemnity certificate granted in respect of an appeal to the respondent to the appeal, being an appeal in a sequence of appeals, shall be vacated if—

- (a) in a later appeal in the sequence the successful party is the one to whom the indemnity certificate was granted; or
- (b) an indemnity certificate is granted in respect of a later appeal in the sequence and the respondent to the earlier appeal is a party to the later appeal.

(4) (a) An indemnity certificate granted in respect of an appeal to the respondent to the appeal shall have no force or effect—

- (i) where a time is limited for appealing against the decision in the appeal—during the time limited for appealing against the decision in the appeal;
- (ii) where an appeal lies against the decision in the appeal but no time is so limited—until an application for leave to appeal against the

the decision in the appeal has been determined and, where leave is granted, the appeal is instituted, or until the respondent lodges with the Under Secretary of the Department of the Attorney-General and of Justice an undertaking in writing by the respondent that the respondent will not seek leave to appeal, or appeal pursuant to the leave granted, against the decision in the appeal, whichever first happens;

- (iii) notwithstanding anything contained in subparagraph (ii) of this paragraph where the respondent gives the undertaking referred to in that subparagraph and thereafter seeks leave to appeal, or appeals, against the decision in the appeal—until the application for leave has been determined and, where leave is granted, the appeal is instituted;
- (iv) notwithstanding anything contained in the foregoing provisions of this paragraph where the decision in the appeal is the subject of an appeal—during the pendency of the appeal.

Where the appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under subsection three of this section—

- (v) the reference to the decision in the appeal in the foregoing provisions of this paragraph shall be construed as including a reference to the decision in the later appeal or in each such later appeal, as the case may be; and
- (vi) the reference to the pendency of the appeal in those provisions shall be construed as including a reference to the pendency of the later appeal or of each such later appeal, as the case may be.

(b)

No. 20, 1959.

(b) Where an undertaking has been given by a respondent under the foregoing provisions of this subsection and thereafter he seeks leave to appeal or appeals, as the case may be, against the decision to which the undertaking relates, the respondent shall, upon demand made by the Under Secretary of the Department of the Attorney-General and of Justice, pay to the said Under Secretary any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate or, if the respondent notifies the said Under Secretary in writing of his seeking leave to appeal or of his appeal, as the case may be, any amount paid to the respondent, or for and on behalf of the respondent, under the indemnity certificate before the respondent gave the notification, and the amount concerned may be recovered by the said Under Secretary from the respondent as a debt in any court of competent jurisdiction.

Any amount paid to, or recovered by, the said Under Secretary under this subsection shall be paid by him into the Fund.

(c) Nothing in this subsection affects the operation of subsection three of this section.

(5) The grant or refusal of an indemnity certificate shall be in the discretion of the court and no appeal shall lie against any such grant or refusal.

(6) 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.

(7) An indemnity certificate shall not be granted in favour of the Crown or a company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

3. The Suitors' Fund Act, 1951, is further amended : — No. 20, 1959.

Further
amendment
of Act No.
3, 1951.

(a) by omitting from subsection one of section three the words "of this Act" where secondly occurring and by inserting in lieu thereof the words "and in sections 6A and 6B of this Act and in subsection (1A) of section fourteen of the Legal Assistance Act, 1943, as amended by subsequent Acts";

Sec. 3.
(Suitors'
Fund.)

(b) by inserting next after section six the following new sections :—

New secs.
6A & 6B.

6A. (1) Where on or after the day on which Her Majesty's assent to the Suitors' Fund (Amendment) Act, 1959, is signified—

Costs of
proceedings
not com-
pleted by
reason of
death of
judge, &c.,
or for other
reasons not
attributable
to acts, &c.,
of parties.

(a) any civil or criminal proceedings are rendered abortive by the death or protracted illness of the judge, magistrate or justice before whom the proceedings were had;

(b) an appeal on a question of law against the conviction of a person (in this section referred to as the appellant) convicted on indictment is upheld and a new trial is ordered; or

(c) the hearing of any civil or criminal proceedings is discontinued and a new trial ordered by the presiding judge, magistrate or justice for a reason not attributable in any way to disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default, in the case of civil proceedings, of all or of any one or more of the parties thereto or their counsel or attorneys, or, in the case of criminal proceedings, of the accused or his counsel or attorney, and the presiding judge.

No. 20, 1959.

judge, magistrate or justice grants a certificate (which certificate the presiding judge, magistrate or 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 disagreement on the part of the jury, where the proceedings were with a jury, or to the act, neglect or default of all or of any one or more of the parties to the proceedings or their counsel or attorneys; 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 disagreement on the part of the jury or to the act, neglect or default of the accused or his counsel or attorney,

and any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, incurs additional costs by reason of the new trial that is had as a consequence of the proceedings being so rendered abortive or as a consequence of the order for a new trial, as the case may be, then the Under Secretary of the Department of the Attorney-General and of Justice may, upon application made in that behalf, authorise the payment from the Fund to the party or the accused or the appellant, as the case may be, of the costs, or such part thereof as the said Under Secretary may determine, incurred by the party or the accused or the appellant, as the case may be, in the proceedings before they were so rendered abortive or the conviction was quashed or the hearing of the proceedings was so discontinued, as the case may be.

(2)

(2) No amount shall be paid from the Fund No. 20, 1959. under this section to the Crown or to any company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

6B. (1) Where on or after the day on which Her Majesty's assent to the Suitors' Fund (Amendment) Act, 1959, is signified, a new trial is ordered in an action on the ground 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—

Costs of motion for new trial on ground that damages were excessive or inadequate.

- (a) an amount equal to the costs of the appellant in the motion for the new trial ordered to be paid and actually paid by the respondent: Provided that where the Under Secretary of the Department of the Attorney-General and of Justice is satisfied that the respondent is unable through lack of means to pay the whole of those costs or part thereof or that payment of those costs or part thereof would cause the respondent undue hardship, the said Under Secretary may, if so requested by the respondent, direct in writing that an amount equal to those costs or to the part of those costs not already paid by the respondent be paid from the Fund for and 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) fifty per centum or such other percentage as may be prescribed (at the time when the order for the new trial is made) in lieu thereof by the Governor by proclamation published

No. 20, 1959.

published in the Gazette of the amount payable from the Fund pursuant to paragraph (a) of this subsection or, where no amount is so payable, an amount equal to the costs of the motion for the new trial, as taxed, incurred by the respondent and not ordered to be paid by any other party : Provided that where an amount is payable from the Fund pursuant to paragraph (a) of this subsection, but the Under Secretary of the Department of the Attorney-General and of Justice directs that the costs of the motion for the new trial incurred by the respondent and not ordered to be paid by any other party be taxed at the instance of the respondent or those costs are, without such a direction, taxed at the instance of the respondent, the amount payable from the Fund under this paragraph shall be the amount equal to those costs as so taxed ; and

- (c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, an amount equal to the costs incurred by him in having those costs taxed.

Notwithstanding the foregoing provisions of this subsection—

- (i) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the respondent, the aggregate of the amounts payable from the Fund pursuant to that paragraph and paragraph (c) of this subsection shall not exceed the amount payable from the Fund pursuant to paragraph (a) of this subsection ;
- (ii) the amount payable from the Fund in respect of the motion for a new trial shall not in any case exceed the sum of one thousand pounds or such other amount as may be fixed (at the time when the order for the new trial is made) in lieu thereof by the Governor by proclamation published in the Gazette.

The

The Governor may from time to time in like manner vary or revoke any proclamation under this section.

(2) This section does not apply where the respondent to the motion for the new trial is the Crown or a company or foreign company having a paid-up capital of one hundred thousand pounds or more.

In this subsection "company" and "foreign company" have the meanings ascribed to them by subsection one of section six of the Companies Act, 1936, as amended by subsequent Acts.

4. The Legal Assistance Act, 1943, as amended by subsequent Acts, is amended—
- (a) by omitting from subsection five of section eight the words “; and”
 - (c) shall not, except where express provision is made in this Act, be liable for costs to any other party in any proceeding to which the certificate relates”;
 - (b) by omitting from subsections one and two of section eleven the words “or the costs of the other party, or the costs of both such solicitor and such party”;
 - (c) by inserting next after subsection one of section fourteen the following new subsection :—
 - (1A) (a) The court in which are taken proceedings to which an assisted person is a party shall make, against the assisted person, the like order for costs (except in favour of another assisted person) as that court would have made against the assisted person had he not been an assisted person, and in proceedings in which costs follow the event the like costs shall be adjudged to the other party against the assisted person (except where that other party is an assisted

Amendment of Act No. 17, 1943.

Sec. 8. (Endorsement and filing of certificate.)

Sec. 11. (Court may order payment of costs by assisted person in certain events.)

Sec. 14. (Costs.)

No. 20, 1959.

assisted person) as would have been adjudged to that other party had the assisted person not been an assisted person.

(b) The costs referred to in paragraph (a) of this subsection shall, upon production to the Under Secretary of the Department of the Attorney-General and of Justice of such evidence as to the amount thereof as he may require, be paid from the Suitors' Fund established under the Suitors' Fund Act, 1951, as amended by subsequent Acts, to the person in whose favour they were ordered to be paid or to whom they were adjudged, and the assisted person shall not be liable for the payment thereof.

(c) Where the effect of an order of a court is to require costs paid pursuant to the order of a court in earlier proceedings to be refunded and those costs were paid from the Fund referred to in paragraph (b) of this subsection, the person liable to refund the costs shall pay the amount thereof to the said Under Secretary.

Any amount so payable to the said Under Secretary may be recovered by him from the person so liable as a debt in any court of competent jurisdiction.

Any amount paid to, or recovered by, the said Under Secretary under this subsection shall be paid by him into that Fund.

Preservation of prior maximum limit where payment was made from Fund while that limit was in force.

5. The provisions of subsection two of section six of the Suitors' Fund Act, 1951-1959, shall, in relation to an indemnity certificate under or pursuant to which an amount was paid from the Fund before the second day of July, one thousand nine hundred and fifty-four, have effect as if the words "one thousand pounds or such amount as may be fixed (at the time when the indemnity certificate is granted) in lieu thereof by the Governor by proclamation published in the Gazette" were omitted therefrom and the words "five hundred pounds" were inserted in lieu thereof.

LOCAL