

**9** Section sixty-nine of the Principal Act is repealed and the following section is substituted therefor:—

“69—(1) Subject to subsection (2) of this section all penalties recovered under this Act shall be paid into the Consolidated Revenue. Application of penalties.

“(2) One-half of all penalties recovered under Part III shall be paid to the Commission.”

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## APPEAL COSTS FUND.

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No. 57 of 1968.

AN ACT to make provision with respect to liability for the costs of certain litigation, to establish a Fund to meet that liability, and to provide for matters incidental thereto. [5 December 1968.]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—(1) This Act may be cited as the *Appeal Costs Fund Act 1968*. Short title and commencement.

(2) This Act shall commence on a day to be fixed by proclamation.

Interpre-  
tation.  
Cf. No. 7117  
(Vic.), s. 2.

**2** In this Act, unless the contrary intention appears—

- “appeal” includes a motion 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 and the guardian *ad litem* of a person;
- “costs”, in relation to an appeal, includes the costs of an application for an indemnity certificate in respect of an appeal but, except where otherwise expressly provided in this Act, does not include costs incurred in a court of first instance;
- “court of summary jurisdiction” has the meaning assigned to that expression by the *Justices Act 1959*;
- “Fund” means the Appeal Costs Fund established under this Act;
- “indemnity certificate” means an indemnity certificate granted under section eight or section ten;
- “judicial officer” means a judge, a police magistrate, a commissioner of a court of requests, the chairman of a court of general sessions, or two or more justices in petty sessions, and includes the Master;
- “Master” means the Master of the Supreme Court and includes a Deputy Master of the Supreme Court;
- “proper officer”, used in relation to a court, means—
- (a) in the case of the Supreme Court, the Registrar of the Supreme Court;
  - (b) in the case of a court of requests or a court of general sessions, the registrar of that court; and
  - (c) in relation to a court of summary jurisdiction, the clerk of petty sessions for the district in which the court is held;
- “respondent” includes the next friend of an infant or person under disability and the guardian *ad litem* of a 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.

The Appeal  
Costs Fund.  
Vic., s. 8.  
No. 59 of  
1955 (Tas.),  
ss. 7, 8.

**3**—(1) For the purposes of this Act, there shall be a fund to be known as the Appeal Costs Fund.

(2) The Fund shall consist of—

- (a) money paid into the Fund pursuant to section six;

(b) moneys paid into the Fund by the Master as required by subsection (6) of section thirteen; and

(c) income derived from the investment of moneys forming part of the Fund.

(3) From the Fund there shall be paid the amounts referred to in sections nine, eleven, fifteen, sixteen, and seventeen.

(4) The Fund is vested in, and shall be managed by, the Master.

(5) The income of the Fund is not subject to any tax imposed by or under a law of the State.

(6) The Master may invest moneys standing to the credit of the Fund in any manner for the time being allowed by law for the investment of trust funds.

(7) Moneys standing to the credit of the Fund that are held uninvested may be lodged either at call or on fixed deposit, or partly at call and partly at fixed deposit, with the Treasurer or with the Commonwealth Trading Bank of Australia.

**4** The accounts of the Fund are subject to audit under the provisions of the *Audit Act* 1918. Audit.

**5**—(1) On and after the date of the commencement of this Act, in addition to any fee payable in respect thereof under any other law, there is payable the appropriate fee specified hereunder, namely:— Additional fee to be paid in certain cases. Vic., ss. 8, 9.

(a) On the sealing of a writ of summons to be issued out of the Supreme Court—two dollars; and

(b) On the filing of a plaint in a court of requests or a court of general sessions—ten cents.

(2) Where by a conviction or order made on the hearing of a complaint under the *Justices Act* 1959 (other than a complaint in respect of an indictable offence, including an indictable offence triable summarily by virtue of that Act) a fine is imposed on a person or a person is ordered to pay a sum of money, either with or without costs or for costs alone, that person shall pay to the appropriate clerk of petty sessions a fee of ten cents in addition to the other fees (if any) ordered, pursuant to section one hundred and thirty-seven of that Act, to be paid by that person.

(3) A fee that is required to be paid by a person pursuant to subsection (2) of this section shall, for the purposes of recovery, be deemed to be costs ordered to be paid under section seventy-seven of the *Justices Act* 1959.

(4) The fee referred to in paragraph (a) or paragraph (b) of subsection (1) of this section is not payable on or in respect of the sealing of a writ of summons or the filing of a plaint in a case where, by virtue of a provision of, or by virtue of any direction or approval given under, any Act, rule of court, or rule of practice the writ or plaint may be sealed or filed without payment of a fee.

Quarterly returns by officers of courts.  
Cf. Vic., s. 10.

**6**—(1) On or before the last day of January, April, July, and October in each year, the proper officer of a court shall cause to be prepared and sent to the Master a statement in the prescribed form signed by the proper officer—

- (a) setting forth the total amount paid to him during the preceding three months by way of fees under section five as appearing from the records in his custody or under his control; and
- (b) containing such other information, if any, as may be prescribed,

and shall, with that statement, transmit to the Master the amount referred to in paragraph (a) of this subsection.

(2) The Master shall pay all amounts transmitted to him pursuant to subsection (1) of this section into the Fund.

(3) The regulations may require the proper officer of a court to keep such records for the purposes of this Act as may be prescribed and may generally regulate the keeping of those records and the preparation and sending to the Master of statements under subsection (1) of this section.

Payments out of the Fund.  
Vic., s. 12.

**7**—(1) No moneys shall be paid out of the Fund otherwise than on and in accordance with a certificate of the Master.

(2) The Master shall not issue a certificate for the payment of moneys out of the Fund unless he is satisfied that the payment is authorized 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.

(3) Payments out of the Fund shall be made at the end of each financial year.

(4) If in any financial year payable claims on the Fund exceed the amount thereof they shall be paid ratably to the full extent of the Fund.

(5) If at the end of a financial year the amount of the Fund exceeds the payable claims thereon for that year, the excess shall be used to pay ratably all unsatisfied claims, if any, payable in the last preceding five financial years.

Grant of indemnity certificate to respondent in certain cases.  
Vic., s. 13.

**8**—(1) Where an appeal—

(a) to the Supreme Court from a decision of—

(i) some other court; or

(ii) a board or other body or person from whose decision there is an appeal to a superior court on a question of law or who 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;

(b) to the Full Court of the Supreme Court from a decision of that Court held before a single judge or of a judge in chambers;

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

- (d) 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; or
- (e) to the Queen in Council from a decision of the Supreme Court,

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

(2) Where an appeal is determined by the Queen in Council or the High Court of Australia, the power conferred on the Supreme Court by subsection (1) of this section may be exercised by a judge sitting in chambers.

**9**—(1) Subject to this Act, where a respondent to an appeal has been granted an indemnity certificate, the certificate entitles the respondent to be paid from the Fund—

Effect of indemnity certificate granted to respondent. Vic., s. 14.

- (a) an amount equal to the appellant's costs—
  - (i) of the appeal in respect of which the certificate was granted; and
  - (ii) where that appeal is an appeal in a sequence of appeals, the appellant's taxed costs of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

being costs ordered to be paid and actually paid by or on behalf of the respondent;

- (b) an amount equal to the respondent's costs—
  - (i) of the appeal in respect of which the certificate was granted; and
  - (ii) where that appeal is an appeal in a sequence of appeals, the respondent's taxed costs of any appeal or appeals in the sequence that preceded the appeal in respect of which the certificate was granted,

not being costs that were ordered to be paid by any other party; 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 or on his behalf in having those costs taxed.

(2) Where an indemnity certificate has been granted as provided in section eight and the Master is satisfied that the respondent has unreasonably refused, or has neglected, or is unable through lack of means, to pay to the appellant the whole or any part of the costs referred to in paragraph (a) of subsection (1) of this section or that payment of those costs or of that part thereof would cause the respondent undue hardship, the Master may direct that an amount equal to those costs or to the part of those costs not already paid by or

on behalf of the respondent be paid from the Fund for and on behalf of the respondent to the appellant and thereupon the appellant is entitled to payment from the Fund in accordance with the direction of the Master and the Fund is discharged from liability to the respondent in respect of those costs to the extent of the amount paid in accordance with the direction.

(3) Notwithstanding anything to the contrary in the foregoing provisions of this section—

- (a) the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of subsection (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of that subsection; and
- (b) the amount payable from the Fund to a respondent under any one indemnity certificate granted to him pursuant to section eight shall not in any case exceed the sum of two thousand dollars.

Power of Supreme Court to grant indemnity certificate to successful appellant in certain cases.  
Vic., s. 14A.

### 10 Where—

- (a) there is an appeal from the decision of a court of summary jurisdiction to the Supreme Court on a question of law;
- (b) the respondent does not appear either in the proceedings before the court of summary jurisdiction or on the appeal; and
- (c) the appeal succeeds but the Supreme Court refuses to order the respondent to pay the appellant's costs of the appeal,

the Supreme Court may, on application made in that behalf, grant to the appellant in the appeal or to one or more of several appellants in the appeal an indemnity certificate in respect of the appeal.

Effect of indemnity certificate granted to appellant.  
Vic., s. 14B.

**11**—(1) Subject to this Act, where an appellant in an appeal has been granted an indemnity certificate, the certificate entitles the appellant to be paid from the Fund—

- (a) an amount equal to the appellant's taxed costs of the appeal in respect of which the certificate was granted; and
- (b) an amount equal to the costs incurred by the appellant in having those costs taxed.

(2) Notwithstanding anything in subsection (1) of this section, the amount payable from the Fund to an appellant under any one indemnity certificate granted to him pursuant to section ten shall not in any case exceed the sum of one hundred and twenty dollars.

Indemnity certificate vacated in certain circumstances.  
Vic., s. 15.

**12**—(1) An indemnity certificate granted to a respondent in respect of an appeal, being an appeal in a sequence of appeals, is vacated if—

- (a) in a later appeal in the sequence the successful party is the one to whom the indemnity certificate is 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.

(2) An indemnity certificate granted to an appellant in respect of an appeal to the Supreme Court is vacated if the appellant is a party to a successful appeal from the decision of the Supreme Court.

**13**—(1) An indemnity certificate granted to a respondent in respect of an appeal (in this subsection referred to as “the first appeal”) has no effect—

Indemnity certificate to have no effect in certain circumstances.  
Vic., s. 16.

- (a) where a time is limited by law for appealing from the decision in the first appeal, during the time so limited;
- (b) where an appeal lies from the decision in the first appeal but no time is so limited, until—
- (i) an application for leave to appeal from that decision has been determined and, where leave is granted, the appeal from that decision is instituted; or
- (ii) the respondent lodges with the Master an undertaking in writing by the respondent that the respondent will not appeal or seek leave to appeal from that decision,
- whichever first happens; and
- (c) notwithstanding anything in the foregoing provisions of this subsection, where the decision in the first appeal is the subject of an appeal, during the pendency of the last-mentioned appeal.

(2) An indemnity certificate granted to an appellant in respect of an appeal (in this subsection referred to as “the first appeal”) has no effect—

- (a) where a time is limited by law for appealing from the decision in the first appeal, during the time so limited;
- (b) where an appeal lies from the decision in the first appeal but no time is so limited, until—
- (i) an application for leave to appeal from that decision has been determined and, where leave is granted, the appeal from that decision is instituted; or
- (ii) the expiration of a period of three months after the determination of the first appeal,
- whichever first happens; and
- (c) notwithstanding anything in the foregoing provisions of this subsection, where the decision in the first appeal is the subject of an appeal, during the pendency of the last-mentioned appeal.

(3) Where an appeal and a later appeal or later appeals form a sequence of appeals and the indemnity certificate has not been vacated under section twelve a reference in this section to the decision in the first appeal (within the meaning of subsection (1) or subsection (2) of this section) shall be construed as including a reference to the decision in the later appeal or in each of the later appeals, as the case may be, and a reference to the pendency of the first appeal shall be construed as including a reference to the pendency of the later appeal or of each of the later appeals, as the case may be.

(4) Where an amount is paid to an appellant or for or on behalf of an appellant by the Master in respect of an appeal to the Supreme Court and thereafter the appellant is a party in a successful appeal from the decision of the Supreme Court, the appellant shall, on demand made by the Master, pay to the Master any amount paid to him or on his behalf under the indemnity certificate and that amount may be recovered by the Master from the respondent as a debt due to the Master by action in a court of competent jurisdiction.

(5) Where an undertaking has been given by a respondent under the foregoing provisions of this section and thereafter he seeks leave to appeal or appeals from the decision to which the undertaking relates, the respondent shall, on demand made by the Master, pay to the Master any amount paid to him, or on his behalf, under the indemnity certificate and that amount may be recovered by the Master from the respondent as a debt due to the Master by action in a court of competent jurisdiction.

(6) An amount paid to or recovered by the Master under subsection (4) or subsection (5) of this section shall be paid into the Fund.

(7) Nothing in this section affects the operation of section twelve.

No appeal lies in respect of grant or refusal of indemnity certificate.  
Vic., s. 17.

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

Abortive proceedings and new trials after proceedings discontinued.  
Vic., s. 18.

**15**—(1) Where after the commencement of this Act—

- (a) any civil or criminal proceedings are rendered abortive by the death, retirement, or protracted illness of a judicial officer before whom the proceedings are heard or by disagreement on the part of the jury where the proceedings are with a jury;
- (b) an appeal on a question of law from 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 a judicial officer before whom the proceedings



are heard for a reason not attributable in any way 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 legal practitioners, or, in the case of criminal proceedings, of the accused or his legal practitioners, and the judicial officer grants a certificate—

- (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 act, neglect, or default of all or any one or more of the parties to the proceedings or of their legal practitioners; 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 of his legal practitioners,

any party to the civil proceedings or the accused in the criminal proceedings or the appellant, as the case may be, if he incurs additional costs, or if additional costs are incurred on his behalf, 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, is entitled to be paid from the Fund any costs incurred by him or on his behalf 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, together with any costs incurred by him or on his behalf in the taxation of those costs at the instance of another party.

(2) A judicial officer presiding at the hearing of any proceedings referred to in subsection (1) of this section is, by force of this subsection, authorized to issue such certificate as is referred to in paragraph (c) of that subsection.

(3) For the purposes of this section, where a judicial officer presiding at the hearing of any criminal proceedings directs that those proceedings be discontinued with a view to other criminal proceedings based on the facts alleged against the accused being instituted, a new trial shall be deemed to have been ordered by the judicial officer.

**16**—(1) Subject to this section, 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 is entitled to be paid from the Fund—

New trial on the ground that damages awarded are excessive or inadequate. Vic., s. 19.

- (a) an amount equal to the costs (if any) of the appellant in the motion for, and upon, the new trial, being costs ordered to be paid and actually paid by or on behalf of the respondent;

- (b) an amount equal to the respondent's taxed costs of the motion for, and upon, the new trial, being costs that are not ordered to be paid by any other party; 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 or on his behalf in having those costs taxed.

(2) Notwithstanding anything in subsection (1) of this section—

- (a) where the Master is satisfied that the respondent has unreasonably refused, or has neglected, to pay the whole or any part of the costs referred to in paragraph (a) of that subsection or that payment of those costs or of any part thereof would cause the respondent undue hardship, the Master 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 respondent be paid for and on behalf of the respondent to the appellant from the Fund, and thereupon the appellant is entitled to payment from the Fund in accordance with the direction and the Fund is 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 paragraph (b) and paragraph (c) of subsection (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of that subsection; and
- (c) the amount payable from the Fund to any one respondent in respect of the motion for a new trial shall not in any case exceed the sum of two thousand dollars.

Amount payable where court refuses to sanction a compromise in an action brought by an infant plaintiff.  
Vic., s. 19A.

**17**—(1) Where a court 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 not greater than the amount that the defendant had agreed to pay under the compromise and the infant plaintiff or his next friend is ordered to pay the whole or any part of the defendant's costs of the action on any

ground, including the payment of money into court by the defendant, the infant plaintiff or his next friend, as the case requires, is 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 his next friend;
- (b) an amount equal to the infant plaintiff's taxed costs of the action incurred, being costs that are not ordered to be paid by any other party; and
- (c) where the costs referred to in paragraph (b) of this subsection are taxed at the instance of the infant plaintiff or his next friend an amount equal to the costs incurred by the infant or on his behalf in having those costs taxed.

(2) Notwithstanding anything in subsection (1) of this section—

- (a) where the Master is satisfied that the infant plaintiff or his next friend has unreasonably refused, or has neglected, or is unable through lack of means, to pay the whole or any part of the costs referred to in paragraph (a) of that subsection or that payment of those costs or of that part thereof would cause the infant plaintiff or his next friend undue hardship, the Master 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 his next friend be paid for and on behalf of the infant plaintiff or his next friend to the defendant from the Fund, and thereupon the defendant is entitled to payment from the Fund in accordance with the direction and the Fund is discharged from liability to the infant plaintiff or his next friend in respect of those costs to the extent of the amount paid in accordance with the direction;
- (b) the aggregate of the amounts payable from the Fund pursuant to paragraph (b) and paragraph (c) of subsection (1) of this section shall not exceed the amount payable from the Fund pursuant to paragraph (a) of that subsection; and
- (c) the amount payable from the Fund to any one infant plaintiff or his next friend shall not in any case exceed the sum of two thousand dollars.

**18** An amount that is payable to a person from the Fund may, if the Master thinks fit, be paid to that person's solicitor, and on payment to his solicitor the Fund is discharged from liability to that person in respect of that amount.

Payments to  
person's  
solicitor.  
Vic., s. 21.

No indemnity certificates or other relief in certain cases.

**19**—(1) An indemnity certificate shall not be granted in respect of an appeal from proceedings begun in a court of first instance before the commencement of this Act.

(2) An indemnity certificate shall not be granted in favour of the Crown and no payment may be made to the Crown out of the Fund.

Regulations.  
Vic., s. 20.

**20** The Governor may make regulations for the purposes of this Act and, in particular and without limiting the generality of this section, may make regulations for or with respect to—

- (a) the making of payments from the Fund;
- (b) the taxation or 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 his costs;
- (c) prescribing officers by whom bills of costs may be taxed for the purposes of this Act in different courts or in different jurisdictions of a court; and
- (d) regulating the preparation and service of bills of costs proposed to be taxed for the purposes of this Act.

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## REGISTRATION OF BIRTHS AND DEATHS.

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No. 58 of 1968.

AN ACT to amend the *Registration of Births and Deaths Act 1895*. [5 December 1968.]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title, citation, and commencement.

**1**—(1) This Act may be cited as the *Registration of Births and Deaths Act 1968*.

(2) The *Registration of Births and Deaths Act 1895*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) Section sixteen of this Act shall commence on the day on which the *Adoption of Children Act 1968* commences.