

SUPREME COURT OF QUEENSLAND

CITATION: *State of Queensland v Tafao & Ors; Serco Australia Pty Ltd & Anor v Tafao & Anor* [2021] QCA 74

PARTIES: **STATE OF QUEENSLAND**
(applicant)
v
LEILANI TAF AO
(first respondent)
SERCO AUSTRALIA PTY LTD
ACN 003 677 352
(second respondent)
MARK WALTERS
(third respondent)

SERCO AUSTRALIA PTY LTD
ACN 003 766 352
(first applicant)
MARK WALTERS
(second applicant)
v
LEILANI TAF AO
(first respondent)
STATE OF QUEENSLAND
(second respondent)

FILE NO/S: Appeal No 6855 of 2020
Appeal No 6898 of 2020
QCATA No 338 of 2018

DIVISION: Court of Appeal

PROCEEDING: Application for Leave *Queensland Civil and Administrative Tribunal Act* – Further Orders

ORIGINATING COURT: Queensland Civil and Administrative Appeal Tribunal at Brisbane – [2020] QCATA 76 (Senior Member Howard, Member Traves)

DELIVERED ON: 16 April 2021

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGES: Sofronoff P and Philippides and Mullins JJA

ORDERS: **In Appeal No 6855 of 2020:**
1. The first respondent must pay the applicant’s costs of the appeal.
2. There is no order for costs in respect of the second and third respondents.
3. The first respondent is granted an indemnity

certificate in respect of the appeal to the Court of Appeal pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973 (Qld)*.

In Appeal No 6898 of 2020:

1. The first respondent must pay the applicants' costs of the appeal.
2. There is no order for costs in respect of the second respondent.
3. The first respondent is granted an indemnity certificate in respect of the appeal to the Court of Appeal pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973 (Qld)*.

CATCHWORDS: APPEAL AND NEW TRIAL – PROCEDURE – QUEENSLAND – APPEAL COSTS FUND – POWER TO GRANT INDEMNITY CERTIFICATE – WHEN GRANTED – where the applicants were granted leave to appeal and the appeal was allowed – where the first respondent conceded it was appropriate that she pay the applicants' costs of the appeal, but applied for an indemnity certificate in respect of the costs of the appeal – where the first respondent did not cause the errors in the tribunal below that resulted in the successful appeals – whether the first respondent should be granted an indemnity certificate

Appeal Costs Fund Act 1973 (Qld), s 15

COUNSEL: C J Murdoch QC, with E Shorten, for the State of Queensland
S Robb for Ms Tafao
S Mackie for Serco Australia Pty Ltd and Mr Walters

SOLICITORS: G R Cooper, Crown Solicitor for the State of Queensland
Caxton Legal Centre for Ms Tafao
Carter Newell Lawyers for Serco Australia Pty Ltd and Mr Walters

- [1] **SOFRONOFF P:** I agree with the reasons of Mullins JA and the costs orders proposed.
- [2] **PHILIPPIDES JA:** I agree with the orders proposed by Mullins JA for the reasons given by her Honour.
- [3] **MULLINS JA:** The court made orders in each appeal that gave the leave to appeal in the terms sought by the respective applicants and allowed the appeal: *State of Queensland v Tafao & Ors; Serco Australia Pty Ltd & Anor v Tafao & Anor* [2021] QCA 56 (the reasons). The parties were given the opportunity to make written submissions on costs.
- [4] The main parties to appeal number 6855 of 2020 were the State as the applicant and Ms Tafao as the first respondent. Although Serco and Mr Walters were named as the second and third respondents in that appeal, they did not participate as active parties in that appeal. Similarly, Serco and Mr Walters as the applicants and Ms

Tafao as the first respondent were the active parties in appeal number 6898 of 2020. Although the State was named as the second respondent in that appeal, it was not an active party.

- [5] In relation to appeal number 6855 of 2020, the State submits that the costs of the appeal to this Court ought to follow the event and suggests that there be no order as to costs against Serco and Mr Walters.
- [6] In relation to appeal number 6898 of 2020, the applicants Serco and Mr Walters submit that costs of the appeal to this court ought to follow the event. Although it appears from their written submissions that Serco and Mr Walters are also seeking their costs of appeal number 6855 of 2020, that submission does not address that Serco and Mr Walters were not active participants in that appeal.
- [7] Ms Tafao does not dispute that, in the usual course, Ms Tafao would be ordered to pay the respective applicants' costs of the appeals on the standard basis, but applies for an indemnity certificate pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973* (Qld). It is submitted on behalf of Ms Tafao that Ms Tafao did not lead the appeal tribunal into error, her conduct in the proceedings do not disentitle her to an indemnity certificate and that therefore the court's discretion to grant such a certificate should be exercised in her favour.
- [8] Ms Tafao's concession that she should pay the respective applicants' costs of the appeals is appropriate and the State's proposal that there be no order as to costs against Serco and Mr Walters in respect of appeal number 6855 of 2020 suggests the appropriate way to deal with the costs of the non-active applicant in the other applicant's appeal is to order that there be no order for costs in respect of the non-active party.
- [9] It is apparent from the nature of the errors identified at [29], [33], [34], [36] and [50] of the reasons, that the submissions of Ms Tafao before the appeal tribunal did not cause the appeal tribunal to make the errors that resulted in the successful appeals to this court. That makes this an appropriate case for the exercise of the discretion to grant an indemnity certificate to Ms Tafao in respect of each appeal.

- [10] It follows the orders should be:

In Appeal No 6855 of 2020:

1. The first respondent must pay the applicant's costs of the appeal.
2. There is no order for costs in respect of the second and third respondents.
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In Appeal No 6898 of 2020:

1. The first respondent must pay the applicants' costs of the appeal.
2. There is no order for costs in respect of the second respondent.

3. The first respondent is granted an indemnity certificate in respect of the appeal to the Court of Appeal pursuant to s 15(1)(a) of the *Appeal Costs Fund Act 1973* (Qld).