

1980

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

FEDERAL PROCEEDINGS (COSTS) BILL 1980

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General,
Senator the Honourable P.D. Durack, Q.C.)

NOTES ON CLAUSES

Clause 1 - Short Title

This clause provides for the citation of the Act.

Clause 2 - Commencement

This clause provides that the Act shall come into operation on the day on which it receives the Royal Assent.

Clause 3 - Interpretation

Sub-clause (1) sets out definitions of a number of words and expressions for the purposes of the legislation.

These are detailed below:

"costs" is given an extended definition to include, as well as ordinary party and party costs (see clause 4), those costs incurred in obtaining a costs certificate and in taxing or otherwise ascertaining costs in respect of proceedings.

"costs certificate" is defined by reference to those provisions of the Bill which empower a court to grant a costs certificate in respect of a Federal appeal.

The purpose of defining "Federal appeal" is to set out those appeals in respect of which a costs certificate may be granted. In summary, an appeal is a Federal appeal if it is an appeal from

- . a single Justice of the High Court
- . the Federal Court of Australia

Sub-clause (2) provides that the amount of any such costs shall, unless it has been fixed by or ascertained in accordance with an order of a court, be determined either by agreement between the Attorney-General and the person who has been granted a costs certificate or assessed by an officer of the court in accordance with the regulations under this Act. If the court specifies the amount of the costs in its order or directs how that amount is to be ascertained then that is the amount of the costs in relation to the proceedings.

Clause 5 - Extension of external Territories

This clause provides that the Act extends to every external Territory except Norfolk Island.

Clause 6 - Costs certificate for respondents - Federal appeals

This clause empowers a court hearing a Federal appeal to grant an unsuccessful respondent a costs certificate in respect of the appeal. Sub-clause (1) applies to the case where the appeal succeeds on a question of law, and sub-clause (2) to the case where the appeal succeeds on quantum of damages.

Sub-clause (3) sets out the effect of a costs certificate under this clause. It is that it would be appropriate for the Attorney-General to authorise a payment to the respondent in respect of the costs which he himself has incurred in relation to the appeal and in respect of the costs of the appellant which the respondent has been ordered to pay.

Clause 7 - Costs certificates for appellants - Federal appeals

Sub-clause (1) authorises, in certain circumstances, a court to grant a costs certificate to an appellant in

where in accordance with section 117 of the Family Law Act 1975, each party is ordered to bear his or her own costs.

Sub-clause (2) provides that the effect of a costs certificate under this clause is that it would be appropriate for the Attorney-General to authorise a payment to the appellant in respect of the costs incurred by the appellant in relation to the appeal.

Clause 10 - Costs certificates - incomplete proceedings

This clause provides for the granting of a costs certificate in respect of abortive proceedings in the High Court, the Federal Court of Australia, the Family Court of Australia and Territory courts other than Northern Territory and Norfolk Island courts.

Sub-clause (2) specifies the circumstances in which proceedings may have been rendered abortive and empowers the court to grant a party to the proceedings a costs certificate.

Sub-clause (3) further provides that a court may grant a costs certificate to a party in respect of proceedings which have been discontinued through no neglect, default or improper act of any party to those proceedings and in which a new hearing has been ordered.

Sub-clause (4) provides that the effect of a costs certificate under this clause is that it would be appropriate for the Attorney-General to authorise a payment to the party in respect of part or all of the costs incurred by the party in relation to the aborted proceedings.

Sub-clause (5) provides that the provisions of this clause extend also to proceedings by way of appeal.

~~4339~~ Sub-clause (2) provides that the question whether bodies corporate are related to one another is to be determined according to the principles set out in the Companies Ordinance 1962 of the Australian Capital Territory for determining whether corporations are related to one another.

Clause 15 - Vacation of costs certificates

Sub-clause (1) provides that a costs certificate granted under clause 6 to a respondent is vacated if he later appeals successfully from the decision in respect of which the certificate was granted or he is successful in a later appeal in the same sequence of appeals.

Sub-clause (2) provides that a costs certificate granted under clause 7 to an appellant is vacated if the respondent to whom the certificate relates later appeals successfully from the decision of the court in respect of which the certificate was granted or is successful in a later appeal in the same sequence of appeals.

Sub-clause (3) makes a like provision with respect to a costs certificate granted under clause 9 to an appellant in family law proceedings.

Clause 16 - Payments on costs certificates

This clause empowers the Attorney-General to authorise a payment to a person to whom a costs certificate has been granted and who applies for payment. An application may not be made in respect of a vacated certificate. In determining the amount to be paid, the Attorney-General is directed to consider the maximum payments prescribed in

be less than 7 days. If it is not repaid within the specified time, the Commonwealth is entitled to take action in a court of competent jurisdiction to recover the amount as a debt due to the Commonwealth.

Sub-clause (4) provides that, for the purposes of the application of section 29 of the Acts Interpretation Act 1901, a letter addressed to the person who received the payment at his last known address will be deemed to be properly addressed. Section 29 of the Acts Interpretation Act 1901 provides that service by post shall be deemed to be effected by properly addressing, pre-paying the postage on and posting a letter.

Clause 18 - Limits of payments in respect of appeals or other proceedings

Sub-clause (1) provides that where the term "prescribed maximum amount" is used in relation to a court, it means the sum of money specified opposite the name of the court in the schedule to the Act or such higher amount as is prescribed. This sub-clause permits the maximum levels of assistance to be increased by regulation.

Sub-clause (2) prohibits the Attorney-General from authorising payments in respect of costs certificates granted in relation to an appeal or a sequence of appeals of a total amount that exceeds the amount prescribed as the maximum amount in relation to the court which granted the certificate. This sub-clause does not apply to costs certificates granted under sub-clauses 10(2) or (3) in respect of abortive or discontinued proceedings.

Sub-clause (3) prohibits the Attorney-General from authorising payments in respect of a costs certificate or costs certificates granted under sub-clause 10(2) or (3) in respect of a particular abortive or discontinued appeal or

Sub-clause (3) provides that a court does not have any power to grant a costs certificate under sub-clauses 10(2) or (3) in respect of proceedings that were aborted or discontinued before the commencement of the Act.

Clause 22 - Regulations

This clause contains the usual regulation-making powers.

Schedule - Prescribed maximum amount

The Schedule is referred to in clause 18 and sets out the maximum amount which the Attorney-General may authorise to be paid in relation to a Federal appeal in respect of each of the courts listed in the Schedule.