

First print



New South Wales

# Costs in Criminal Cases Amendment Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Costs in Criminal Cases Act 1967* to enable the Supreme Court to make an order for costs against a publisher of printed material, or broadcaster of material, in contempt of any court at which a criminal trial is held before a jury, if the publication or broadcast necessitates the discontinuation of the trial.

The order for costs is to be in favour of the Attorney General for the benefit of the parties, the State and other persons prescribed by the regulations. The costs consist substantially of the cost of the remuneration, salaries, fees and expenses of, for example, the judicial and other officers, staff, jury members, witnesses and lawyers involved in the trial that has failed. The order can only be made against a person who is the proprietor or other person in charge of the business or other undertaking responsible for the printed publication or broadcast.

An amendment is also made to the *Suitors' Fund Act 1951* to ensure that amounts paid under that Act to a defendant are reduced by the amount recovered for the defendant under the *Costs in Criminal Cases Act 1967*.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** is a formal provision giving effect to the amendments to the *Costs in Criminal Cases Act 1967* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendment to the *Suitors' Fund Act 1951* set out in Schedule 2.

### **Schedule 1      Amendment of Costs in Criminal Cases Act 1967**

**Schedule 1 [1]–[3]** provide for the division of the existing provisions of the *Costs in Criminal Cases Act 1967* into Parts 1 (Preliminary) and 2 (Costs in criminal proceedings).

**Schedule 1 [4]** consequentially amends section 6 of that Act.

**Schedule 1 [5]** omits an obsolete provision from that Act.

**Schedule 1 [6]** inserts new Parts and a Schedule in the *Costs in Criminal Cases Act 1967*, as set out below.

### **Part 3 Costs of trial discontinued because of contemptuous publication or broadcast**

**Section 7** enables the Supreme Court to make orders as to costs if a criminal trial is discontinued because of a contemptuous printed publication or broadcast. An order can only be made on application by the Attorney General and against a person who is the proprietor or other person in charge of the business or other undertaking responsible for the printed publication or broadcast.

**Section 8** specifies the costs that may be ordered as being the costs of the parties and the State and other costs prescribed by regulation.

**Section 9** specifies the persons for the benefit of whom the Attorney General may make application and the limitations on the application.

**Section 10** provides that the Attorney General may issue a certificate as to the costs that relate to a discontinued trial. The certificate is conclusive evidence of those costs, except if it has not been prepared in accordance with the regulations.

**Section 11** sets out certain requirements as to orders.

**Section 12** provides that an order for costs may be enforced as a civil debt and that the Attorney General is to distribute the costs recovered among the persons entitled to them.

**Section 13** requires the amount of any payment under the *Suitors' Fund Act 1951* to be refunded or recovered to the extent that the payment has been covered by an order for costs under the proposed new Part of the *Costs in Criminal Cases Act 1967*.

**Section 14** clarifies certain procedural matters, including that the Supreme Court may make orders for costs as part of criminal proceedings for contempt, may do so if the charge of contempt is found proven (even without subsequent conviction) and may treat two or more contemnors as jointly or severally liable for the costs.

**Section 15** specifies certain matters for which regulations may be made for the purposes of Part 3.

#### **Part 4 Miscellaneous**

**Section 16** is the standard power for the making of regulations.

**Section 17** is a formal provision giving effect to a proposed Schedule 1, details of which follow.

#### **Schedule 1 Savings and transitional provisions**

**Clause 1** is the standard power for the making of savings and transitional regulations.

**Clause 2** preserves an existing transitional provision in the *Costs in Criminal Cases Act 1967*.

**Clause 3** provides that the proposed Part 3 is to apply to proceedings, whether started before, on or after the commencement of that Part, but only if the contemptuous printed publication or broadcast that causes their discontinuation occurs on or after that commencement.

#### **Schedule 2 Amendment of Suitors' Fund Act 1951**

**Schedule 2** inserts proposed section 6E in the *Suitors' Fund Act 1951* to reduce payments under that Act to a defendant for whom costs are recovered under proposed Part 3 of the *Costs in Criminal Cases Act 1967*.





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# Costs in Criminal Cases Amendment Bill 1997

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New South Wales

## **Costs in Criminal Cases Amendment Bill 1997**

No. , 1997

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### **A Bill for**

An Act to amend the *Costs in Criminal Cases Act 1967* with respect to the costs of a jury trial discontinued because of a contemptuous publication or broadcast; to amend the *Suitors' Fund Act 1951* consequentially; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Costs in Criminal Cases Amendment Act 1997*.

**2 Commencement**

This Act commences on a day or days to be proclaimed.            5

**3 Amendment of Costs in Criminal Cases Act 1967 No 13**

The *Costs in Criminal Cases Act 1967* is amended as set out in Schedule 1.

**4 Amendment of Suitors' Fund Act 1951 No 3**

The *Suitors' Fund Act 1951* is amended as set out in Schedule 2.            10



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**Schedule 1 Amendment of Costs in Criminal Cases Act 1967**

(Section 3)

**[1] Part 1**

Insert "**Part 1 Preliminary**" before section 1.

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**[2] Section 1 Short title and commencement**

Omit subsection (3).

**[3] Part 2**

Insert "**Part 2 Costs in criminal proceedings**" before section 2.

**[4] Section 6 Certificate not admissible in evidence**

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Omit "Act". Insert instead "Part".

**[5] Section 7 Amendment of Act No 27, 1902**

Omit the section.

**[6] Parts 3 and 4**

Insert at the end of the Act:

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**Part 3 Costs of trial discontinued because of contemptuous publication or broadcast**

**7 Supreme Court may order contemnor to pay costs**

(1) The Supreme Court may make an order under this Part as to the costs of criminal proceedings before a jury that are discontinued solely or mainly because they have been affected by:

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(a) a printed publication circulated to the public, or

(b) a radio, television or other electronic broadcast to the public.

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Costs in Criminal Cases Amendment Bill 1997

Schedule 1 Amendment of Costs in Criminal Cases Act 1967

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- (2) The order may only be made against a person:
- (a) against whom a charge of contempt of court is found proven because of the printed publication or broadcast, and
  - (b) who is the proprietor or other person in charge of the business or other undertaking responsible for the printed publication or broadcast. 5
- (3) The order may only be made on application by the Attorney General.
- (4) The order may only be made in favour of the Attorney General for the benefit of all or any of the persons specified in the application. 10
- (5) The order may be made whether or not a new trial has been ordered in place of the discontinued proceedings.
- 8 Nature of costs** 15
- The costs in respect of which an order under this Part may be made are:
- (a) the legal costs of parties to the discontinued proceedings, and
  - (b) the cost to the State in the provision of legal services to the accused, and 20
  - (c) the cost to the State in the provision of salaries, fees and services related to the conduct of the proceedings (including the remuneration of judicial and other officers and other staff, the fees paid to legal practitioners and members of the jury and the expenses paid to witnesses and members of the jury), and 25
  - (d) costs of any other class prescribed by the regulations. 30
- 9 Application**
- (1) The Attorney General may make application under this Part for the benefit of such of the following persons as have, in the opinion of the Attorney General, suffered monetary loss as a result of the discontinuation: 35
- (a) the accused,
  - (b) the State,
  - (c) any other person, or person within a class, prescribed by the regulations.

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- (2) An application against a person may be made at any time after proceedings for contempt against the person have commenced, whether or not they have been concluded, but cannot be made more than 3 years after their conclusion. 5
- (3) More than one application may be made against the person.

**10 Certificate of costs**

- (1) The Attorney General may attach to an application under this Part, or separately tender, a certificate setting out the costs that relate to the discontinued proceedings and apply to each person specified in the application. 10
- (2) To the extent that the regulations so require, the costs set out in the certificate must be stated and calculated in accordance with the regulations. 15
- (3) The certificate is admissible in evidence in proceedings under this Part. The certificate is conclusive evidence of the costs certified by it except to the extent that it is shown that the costs have not been stated or calculated in accordance with the regulations. 20

**11 Nature of order**

- (1) An order for costs under this Part is to be made in favour of the Attorney General for the benefit of all or any of the persons specified in the relevant application.
- (2) The order is to specify in respect of each person for the benefit of whom it is made the amount of costs to which the person is entitled. 25
- (3) The amount specified in respect of each person may be less than or equal to the amount specified in the certificate of the Attorney General. 30

**12 Enforcement of order**

- (1) An order under this Part is enforceable by the Attorney General, the costs to which it relates being a civil debt due to the Crown for the benefit of the persons specified



in the order and recoverable as such in any court of competent jurisdiction from the person against whom the order is made.

- (2) A failure to comply with the order does not constitute contempt of court. 5
- (3) The Attorney General must distribute the costs recovered under the order among the persons for the benefit of whom they have been recovered according to the distribution specified in the order of the Supreme Court.

**13 Recovery of any payment under Suitors' Fund Act 1951** 10

- (1) If the accused has already received payment from the Suitors' Fund under the *Suitors' Fund Act 1951* and the Supreme Court makes an order for costs under this Part for the benefit of the accused, the Supreme Court is to order that: 15
  - (a) those costs be paid directly to the Suitors' Fund to the extent that their amount does not exceed the payment from the Fund, and
  - (b) any amount by which those costs exceed that payment be paid to the accused. 20
- (2) If the accused has received the payment from the Suitors' Fund and some or all of his or her costs ordered under this Part, the Attorney General may recover from the accused the amount of the payment from that Fund (except to the extent that it exceeds the costs received by the accused) and pay it back into that Fund. 25
- (3) Payment by the accused of the amount that the Attorney General may recover under subsection (2) is enforceable as a civil debt in any court of competent jurisdiction.

**14 Procedure** 30

- (1) An application for an order for costs under this Part may be heard and determined by the Supreme Court after a charge of contempt has been found proven against one or more persons, even if the finding was made in the Supreme Court as differently constituted. 35

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- (2) Proceedings for the hearing and determination of the application are in the nature of civil proceedings, whether they form part of the proceedings at which a person is tried for contempt or not.
- (3) Any evidence heard at the proceedings at which a person is tried for contempt may be taken into account by the Supreme Court at the proceedings for the hearing and determination of the application. 5
- (4) The Supreme Court may make an order for costs under this Part even if it does not proceed to a conviction for contempt so long as it has found the charge of contempt proven. 10
- (5) The application against one person may be heard and determined whether or not other persons responsible for the printed publication or broadcast to which the contempt relates have been tried for contempt and whether or not, if they have been tried, the charge of contempt has been found proven against them. 15
- (6) In a case where there is more than one person against whom a charge of contempt is found proven because of a printed publication or broadcast, the Supreme Court may treat the persons as jointly and severally liable for the costs, or may apportion the amounts of costs, for which it makes an order under this Part. 20
- (7) The only parties to the hearing and determination of the application are the Attorney General and the persons against whom the charge relating to the relevant contempt has been found proven. 25

**15 Regulations for the purposes of Part 3**

- (1) Regulations may be made for or with respect to the following matters: 30
- (a) the persons or classes of persons in whose favour costs may be ordered under this Part,
  - (b) the costs that may be ordered under this Part,
  - (c) any other matter relating to applications and orders under this Part. 35



- (2) The regulations may prescribe classes, heads and scales of costs, daily costs, maximum costs, formulae and flat rates (or some or all of these) to be applied in the statement and calculation of costs under this Part or may make other provision with respect to the statement and calculation of those costs. 5

#### **Part 4      Miscellaneous**

##### **16 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10

##### **17 Savings and transitional provisions**

Schedule 1 has effect. 15

#### **Schedule 1      Savings and transitional provisions**

(Section 17)

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 20

*Costs in Criminal Cases Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 25

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 30

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**2 Application of Part 2**

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Part 2 does not apply in respect of proceedings instituted, or appeals lodged, before 1 January 1968.

**3 Application of Part 3**

Part 3 applies where proceedings, whether commenced before or after the commencement of that Part, are discontinued solely or mainly because of a printed publication or broadcast made on or after the commencement of that Part.

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**Schedule 2 Amendment of Suitors' Fund Act 1951**

(Section 4)

**Section 6E**

Insert after section 6D:

**6E Reduction where order for costs under Costs in Criminal Cases Act 1967**

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If an amount is to be paid to an accused from the Fund under this Act in respect of costs incurred in criminal proceedings that have been discontinued, the amount is to be reduced by the total amount (if any) recovered by the Attorney General for the benefit of the accused under an order under Part 3 of the *Costs in Criminal Cases Act 1967* in respect of the discontinuation of those proceedings.

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