



# Federal Proceedings (Costs) Act 1981

No. 23 of 1981

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# Federal Proceedings (Costs) Act 1981

No. 23 of 1981

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## An Act relating to costs in federal courts and courts of certain Territories

[Assented to 14 April 1981]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### Short title

1. This Act may be cited as the *Federal Proceedings (Costs) Act 1981*.

### Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

### Interpretation

3. (1) In this Act, unless the contrary intention appears—

“costs”, in relation to proceedings, includes—

- (a) the costs of obtaining a costs certificate in respect of the proceedings; and
- (b) the costs of taxing, or otherwise ascertaining, costs in respect of the proceedings;

“costs certificate” means a costs certificate granted under sub-section 6 (1) or (2), 7 (1), 8 (1) or (2), 9 (1) or 10 (2) or (3);

“Family Court” means the Family Court of Australia;

“Federal appeal” means—

- (a) an appeal to the Full Court of the High Court from a judgment of the High Court constituted by a single Justice;
- (b) an appeal to the High Court from a judgment of the Federal Court;
- (c) an appeal to the High Court from a judgment of the Supreme Court of a Territory;
- (d) an appeal to the High Court from a judgment of the Family Court;
- (e) an appeal to the Full Court of the Federal Court from a judgment of the Federal Court constituted by a single Judge;
- (f) an appeal to the Federal Court from a judgment of the Supreme Court of a Territory;
- (g) an appeal to the Federal Court from a decision of the Administrative Appeals Tribunal;
- (h) an appeal to the Supreme Court of a Territory from a judgment of another court of that Territory;
- (j) an appeal to the Full Court of the Family Court from a judgment of the Family Court constituted otherwise than as a Full Court; or
- (k) an appeal to the Family Court from a judgment of a court of a State, a court of an internal Territory (including the Northern Territory) or a court of Norfolk Island;

“Federal Court” means the Federal Court of Australia;

“judgment” includes any decree, order or decision, whether final or interlocutory, and a conviction or sentence;

“proceedings” includes a Federal appeal and a trial;

“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 judgment in that other appeal;

“Territory” does not include the Northern Territory or Norfolk Island.

(2) A reference in this Act to an appellant to an appeal, a respondent to an appeal, a party to a cause or to proceedings, an accused person or a person who has been granted a costs certificate shall be read as including a reference to the legal personal representative of the appellant, respondent, party or person, as the case requires.

**Costs to be costs as between party and party, &c.**

4. (1) A reference in this Act to costs incurred by a person in relation to proceedings shall be read as a reference to costs so incurred ascertained as if they were costs as between party and party.

- (2) For the purposes of this Act—
- (a) the amount of any costs incurred by a person in relation to proceedings (other than costs to which paragraph (b) applies) is—
- (i) an amount agreed on in respect of those costs by the Attorney-General and the person who has been granted the costs certificate in relation to those costs; or
  - (ii) where under the regulations the amount of those costs has been assessed for the purposes of this Act by an officer of a court—the amount so assessed; or
- (b) where any costs incurred by a person in relation to proceedings have been ordered by a court to be paid to the person by another party to the proceedings and the amount of those costs is specified in, or has been ascertained in accordance with, the order of the court—the amount of those costs is the amount so specified or ascertained, as the case may be.

#### **Extension to external Territories**

5. This Act extends to every external Territory except Norfolk Island.

#### **Costs certificates for respondents—Federal appeals**

6. (1) Subject to this Act, where a Federal appeal succeeds on a question of law, the court that heard the appeal may, on the application of a respondent to the appeal, grant to the respondent a costs certificate in respect of the appeal.

(2) Subject to this Act, where a Federal appeal in relation to the amount of damages awarded by a court succeeds, the court that heard the appeal may, on the application of a respondent to the appeal, grant to the respondent a costs certificate in respect of the appeal.

(3) The certificate that may be granted under sub-section (1) or (2) by a court to a respondent to a Federal appeal is a certificate stating that, in the opinion of the court, it would be appropriate for the Attorney-General to authorize a payment under this Act to the respondent in respect of—

- (a) the costs incurred by the respondent in relation to the appeal; and
- (b) any costs incurred by an appellant in relation to the appeal that have been, or are required to be, paid by the respondent to the appellant in pursuance of an order of the court, not being costs to which a costs certificate granted under section 7 relates.

#### **Costs certificates for appellants—Federal appeals**

7. (1) Subject to this Act, where—

- (a) a respondent to a Federal appeal is, in pursuance of an order of a court, required to pay to an appellant any costs (in this section referred to as the “relevant costs”) incurred by the appellant in relation to the appeal; and

- (b) under sub-section 6 (1) or (2), the respondent is entitled to apply to the court for a costs certificate in respect of the appeal,
- the court, on the application of the appellant, may, if it is satisfied that—
- (c) the respondent is, by reason of lack of means, unable to pay the relevant costs or a part of the relevant costs;
- (d) the payment of the relevant costs or a part of the relevant costs would cause the respondent undue hardship; or
- (e) the whereabouts of the respondent are unknown,
- grant to the appellant a costs certificate in respect of the appeal.

(2) The certificate that may be granted under sub-section (1) by a court to an appellant to a Federal appeal is a certificate stating that, in the opinion of the court, it would be appropriate for the Attorney-General to authorize a payment under this Act to the appellant in respect of—

- (a) where paragraph (1) (c) applies—the whole of the relevant costs or that part of the relevant costs that the respondent is unable to pay;
- (b) where paragraph (1) (d) applies—the whole of the relevant costs or that part of the relevant costs the payment of which would cause the respondent undue hardship; or
- (c) where paragraph (1) (e) applies—the relevant costs.

#### **Costs certificates—new trials**

8. (1) Subject to this Act, where, in a Federal appeal that succeeds on a question of law, the court that heard the appeal grants a new trial in a cause of a civil nature, the court may, on the application of a party to the cause, grant to the party a costs certificate in respect of the new trial.

(2) Subject to this Act, where, in a Federal appeal, being a Federal appeal against a conviction on indictment or a Federal appeal in a sequence of appeals which includes an appeal against a conviction on indictment, that succeeds on a question of law, the court that heard the Federal appeal grants a new trial of an accused person, the court may, on the application of the accused person, grant to the accused person a costs certificate in respect of the new trial.

(3) The certificate that may be granted under sub-section (1) or (2) to a party to a cause or to an accused person, as the case may be, by a court that has granted a new trial is a certificate stating that, in the opinion of the court, it would be appropriate for the Attorney-General to authorize a payment under this Act to that party or accused person in respect of such part as the Attorney-General considers appropriate of any costs incurred by that party or accused person in relation to the new trial.

#### **Costs certificates—Federal appeals in family law proceedings**

9. (1) Subject to this Act, and in particular without limiting section 6, where—

- (a) a Federal appeal referred to in paragraph (d), (j) or (k) of the definition of “Federal appeal” in sub-section 3 (1) succeeds on a question of law; and

(b) in accordance with section 117 of the *Family Law Act 1975*, each party to the appeal bears his or her own costs, the court that heard the appeal may, on the application of the appellant to the appeal, grant to the appellant a costs certificate in respect of the appeal.

(2) The certificate that may be granted under sub-section (1) by a court to an appellant to a Federal appeal is a certificate stating that, in the opinion of the court, it would be appropriate for the Attorney-General to authorize a payment under this Act to the appellant in respect of the costs incurred by the appellant in relation to the appeal.

**Costs certificates--incomplete proceedings**

10. (1) This section applies to the High Court, the Federal Court, the Family Court and a court of a Territory.

(2) Subject to this Act, where any proceedings in a court to which this section applies are rendered abortive by reason that the person, or a person, before whom the proceedings are being conducted dies, resigns, or is removed or dismissed from, his office, suffers a protracted illness or otherwise becomes unable to continue with, or to give judgment in, the proceedings, the court may, on the application of a party to the proceedings, grant to that party a costs certificate in respect of the proceedings.

(3) Subject to this Act, where—

- (a) the hearing of any proceedings in a court to which this section applies is discontinued and a new hearing is ordered; and
- (b) the discontinuance and new hearing are not attributable to the neglect, default or improper act of any party to the proceedings,

the court may, on the application of a party to the proceedings, grant to that party a costs certificate in respect of the proceedings.

(4) The certificate that may be granted under sub-section (2) or (3) by a court to a party to proceedings that have been rendered abortive or the hearing of which has been discontinued, as the case may be, is a certificate stating that, in the opinion of the court, it would be appropriate for the Attorney-General to authorize a payment under this Act to that party in respect of such part as the Attorney-General considers appropriate of any costs incurred by that party in relation to those proceedings.

(5) A reference in this section to proceedings in a court includes a reference to proceedings by way of an appeal to that court.

**Costs of appeal include costs of earlier appeals**

11. A reference in section 6, 7 or 9 to the costs incurred by a person in relation to a Federal appeal shall, where the appeal is in a sequence of appeals that includes an earlier Federal appeal or earlier Federal appeals, be read as including a reference to the costs incurred by the person in relation to that earlier Federal appeal or all those earlier Federal appeals.

**Costs certificates may be granted in Chambers**

12. The jurisdiction conferred on a court by this Act to grant costs certificates may be exercised by a member of that court sitting in Chambers.

**No appeal against refusal of costs certificate**

13. An appeal does not lie from a refusal of a court to grant a costs certificate.

**Costs certificates not to be granted to certain persons**

14. (1) A court is not empowered by this Act to grant a costs certificate to—

- (a) the Commonwealth;
- (b) a State;
- (c) the Northern Territory;
- (d) a person suing, or being sued, on behalf of the Commonwealth, of any State or of the Northern Territory;
- (e) an authority of the Commonwealth, of any State or of any Territory (including the Northern Territory and Norfolk Island);
- (f) a body corporate that has a paid-up capital of \$200,000 or more; or
- (g) a body corporate that is not a body corporate referred to in paragraph (f) but is related to such a body corporate.

(2) For the purposes of sub-section (1), the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations, within the meaning of the *Companies Ordinance* 1962 of the Australian Capital Territory, are related to each other would be determined under that Ordinance.

**Vacation of costs certificates**

15. (1) A costs certificate granted under sub-section 6 (1) or (2) to a respondent to a Federal appeal is vacated if the respondent to whom the certificate has been granted—

- (a) appeals from the judgment in that appeal; and
- (b) is a successful party in the appeal from that judgment or in a later appeal in the same sequence as the appeal from that judgment.

(2) A costs certificate granted under sub-section 7 (1) to an appellant to a Federal appeal is vacated if the respondent to whom the certificate relates—

- (a) appeals from the judgment in that appeal; and
- (b) is a successful party in the appeal from that judgment or in a later appeal in the same sequence as the appeal from that judgment.

(3) A costs certificate granted under sub-section 9 (1) to an appellant to a Federal appeal is vacated if the respondent to the appeal—

- (a) appeals from the judgment in that appeal; and
- (b) is the successful party in the appeal from that judgment or in a later appeal in the same sequence as the appeal from that judgment.

**Payments on costs certificates**

**16. (1)** A person who has been granted a costs certificate (not being a certificate that has been vacated under section 15) may apply to the Attorney-General for payment in accordance with this Act in respect of the certificate.

**(2)** Subject to section 17, where an application is made by a person under sub-section (1) in respect of a costs certificate, the Attorney-General may, having regard to the provisions of section 18 and to the moneys available at the time of the application for making payments under this Act, authorize the payment under this Act to that person of an amount not exceeding the amount or the sum of the amounts of the costs to which the certificate relates, and a payment so authorized shall be made accordingly.

**No payment in respect of costs certificates capable of being vacated**

**17. (1)** The Attorney-General shall not authorize a payment under this Act in respect of a costs certificate referred to in section 15 unless he is satisfied, or is entitled under sub-section (2) of this section to presume, that the certificate will not be vacated under that section.

**(2)** For the purposes of this section, where—

- (a)** there has been no appeal, or application for leave to appeal, against the judgment in the Federal appeal to which a costs certificate referred to in sub-section (1) relates by the respondent an appeal by whom could result in the vacation of the certificate; and
- (b)** the Attorney-General has been given—
  - (i)** notice in writing by that respondent that he does not intend to appeal against that judgment; or
  - (ii)** in the case of a certificate granted to an appellant to the appeal—notice in writing by the appellant that the appellant has no reason to believe that that respondent will appeal against the judgment,

the Attorney-General is entitled to presume that the certificate will not be vacated.

**(3) Where—**

- (a)** a notice referred to in sub-paragraph (2) (b) (i) or (ii) has been given by, or in relation to, a respondent to a Federal appeal;
- (b)** an amount has been paid under this Act to a person who has been granted a costs certificate in respect of the appeal that would not have been paid but for that notice; and
- (c)** that respondent appeals, or seeks leave to appeal, against the judgment in the appeal,

the person so paid shall, upon demand in writing by the Attorney-General or a delegate of the Attorney-General, served on the person, either personally or by post, repay that amount to the Commonwealth within such period, not being less than 7 days, as is specified in the demand and, if the amount is not repaid within that period, the Commonwealth may recover the amount by action in a court of competent jurisdiction as a debt due to the Commonwealth.



(4) For the purpose of the application of section 29 of the *Acts Interpretation Act* 1901 to the service by post on a person of a demand under sub-section (3), such a demand posted as a letter addressed to the person at his last address known to the person making the demand shall be deemed to be properly addressed.

#### **Limits of payments in respect of appeals or other proceedings**

18. (1) In this section, “prescribed maximum amount”, in relation to a court specified in column 1 of the table in the Schedule, means the amount specified in column 2 of that table opposite to that court or such higher amount as is prescribed.

(2) The Attorney-General shall not authorize the payment under this Act in respect of a costs certificate or costs certificates (other than a costs certificate granted under sub-section 10 (2) or (3)) in relation to an appeal or a sequence of appeals of an amount that, or amounts the sum of which, exceeds the amount that is the prescribed maximum amount in relation to the court that heard that appeal or the last of those appeals.

(3) For the purposes of this section, a costs certificate granted under sub-section 8 (1) in respect of a new trial shall be deemed to be a costs certificate in relation to the appeal in which the new trial was granted.

(4) A reference in this section to a court shall be read as a reference to that court however constituted.

#### **Payments to be made out of annual appropriation**

19. Payments under this Act shall be made out of moneys available under an appropriation made by the Parliament.

#### **Delegation**

20. (1) The Attorney-General may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Attorney-General’s Department any of his powers under this Act, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Attorney-General.

(3) A delegation under this section does not prevent the exercise of a power by the Attorney-General.

#### **Application**

21. (1) A court is not empowered to grant a costs certificate under sub-section 6 (1) or (2), 7 (1) or 9 (1) in respect of a Federal appeal instituted, or leave for which was granted, before the commencement of this Act.

(2) A court is not empowered to grant a costs certificate under sub-section 8 (1) or (2) in respect of a new trial granted in a Federal appeal instituted, or leave for which was granted, before the commencement of this Act.

(3) A court is not empowered to grant a costs certificate under subsection 10 (2) or (3) in respect of proceedings that were rendered abortive, or the hearing of which was discontinued, as the case may be, before the commencement of this Act.

**Regulations**

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**SCHEDULE**

Section 18

**PRESCRIBED MAXIMUM AMOUNT**

<b>Court</b>	<b>Amount</b>
	<b>\$</b>
High Court . . . . .	5000
Federal Court . . . . .	3000
Family Court . . . . .	2000
Supreme Court of a Territory . . . . .	3000
other court of a Territory . . . . .	1000