

AJK:df:40896
Your ref:



17 June 2011

Shadow Attorney General
The Hon Stephen Wade

Attention: Sandy Biar

Email: sandy.biar@parliament.sa.gov.au

Email: stephen.wade@parliament.sa.gov.au

Dear Sir,

Re: Statutes Amendment (Budget 2011) Bill 2011

I confirm that ALA has reviewed this Bill and has deep concern in relation to it. I assume by now you have received both the Law Society Press Release and ALA's.

On this matter both groups appear to be of the same view.

- 1. Consultation** - ALA has certainly not been consulted and from what I have gleaned from the Law Society, neither were they. This is a Bill which changes fundamentally the rights of the citizens in this State and should have been a matter that was raised for transparent discussion and not form part of the budget process. Irrespective of conventions, we are of the view that this part of the Bill which is part 5 should be opposed as a matter of principle.
- 2. The Current Situation** – The law in South Australia regarding costs is governed by the Summary Procedures Act 1921 as amended.

Section 189 provides the court and all Magistrates with an unfettered discretion to award costs as it sees fit.

The ordinary principle and the ordinary rule is if you succeed in defeating a charge against you, you obtain costs in the Magistrates Court. This only applies to Summary matters, not to matters heard in the District or Supreme Court.

The rule has existed for most of last century and up until currently. Before that there were common law considerations.

The rule exists for good reason. The obligation of prosecuting someone is not a light one. Police need to be held accountable if they make errors. That includes prosecutions that proceed in bad faith.

I accepted an estimate that there are 80% conviction rates in the Magistrates Court. ALA would like to check that figure as other sources have suggested that there is a 40% acquittal rate. It may be a matter of what is deemed an acquittal and what is deemed a conviction, ie. guilty pleas.

In any event the percentage of acquittals or dismissals is irrelevant. If you are a citizen in that situation you should have the entitlement to claim appropriate costs.

3. **Costs Awarded** – The costs awarded are awarded now in accordance with a general scale which is produced under the rules of the Magistrates Court. They are not a statutory legislative amendment as this would be. Those rules do not detract from the unfettered discretion of the court to award costs at large if it sees fit.

An exposition of the law can be found in Mulligan J's Judgment in the Supreme Court in the matter of *Haslam v Emu Air* [1998] SASC 6990.

The ability to claim costs holds the police prosecutions accountable. Firstly because it is tax payers funds that launch the prosecution and carry it through and secondly because costs are a deterrent to prosecutions that should not be brought. It is also an essential tool in the administration of justice. Matters resolve because of a threat of costs on both side. To remove it from one will cause significant imbalance to the ability to resolve matters at that level in an expeditious, fair and just matter.

4. **The Bill** – the Bill itself says that costs follow the event but only where there are proper grounds and the definition of proper grounds is contained in the Bill's Clause 189A(2), (3) and (4) and further fetters to the discretion result from Clauses 189B, 189C, 189D and 189E.

The unfettered discretion of the court already enables the court to take into account all relevant matters. They are not legislatively prescribed and should not be because they will impede the court's discretion.

Sub Clause (d) and (e) in 189A(2) are clearly erosions of the presumption of innocent. You are either acquitted or not, whether it is technical grounds or on some other basis. If the prosecution has been brought about incompetently, then that is a matter for prosecutions. It should not be a matter for a defendant to be concerned about. Bringing someone to court on a criminal charge is one of the most serious things that can happen to a citizen. Suggesting that because a matter is dismissed on technical grounds that that can be taken into account as a proper matter making order for costs is reprehensible. Similarly, the suggestion of whether

a defendant brings suspicion on himself (Clause (2)(e)) or herself by conduct engaged in after the events constituting commission of the offence also erodes the presumption of innocence. It is up to the prosecuting authority to prove all elements of the offence beyond reasonable doubt. The actions of a defendant after a charge may or may not be relevant to the matter before the court. They can in no way be relevant to the issue of costs if the charge is defeated.

More disturbingly Clause 2(f) says that “where a defendant unreasonably declines an opportunity before a charge was laid to explain his version of events or to produce evidence to exonerate him and that could have avoided a prosecution” then that can be taken into account awarding costs.

Currently the law in Australia in every jurisdiction is that there is a right to silence and the right against self incrimination. Prosecutions have to prove every element of the case. What this does is impose a potential costs penalty for so doing and this will erode one of the purpose of the rule.

Clause 2(f) has no place in the law of South Australia, neither does any of the rest of this amending part. The rules under the Magistrates Court Act deal with what are considered to be an appropriate scale of costs. That issue in itself is debatable. Getting an award of costs is not a lottery win. The costs to a defendant are usually far greater.

Clause (4) purports to say a higher amount can be awarded in certain circumstances. This again restricts discretion and refers to “special difficulty or complexity of the case”. This detracts from the unfettered discretion of the court to award costs where appropriate. Committal proceedings get special treatment and costs will not follow the event normally unless bad faith is displayed. That is a suggested in Clause 189D. In Clause 189E delay and obstruction, are matters that a court will consider.

This Bill is not an attempt to cap fees, it is an attempt to erode a long standing and worthy right of every member of the community. That is that you are innocent until proven guilty and that if you succeed in your challenge you should be able to obtain costs for the prosecution that is being brought and that has been not sufficient to find the charge against you.

5. **Access to Justice** – In many cases where costs are awarded, claims against the Legal Services Commission Fund does not occur. Accordingly, those funds are then put to another case.

You are going to therefore reduce the pool of funds available for defendants to utilise in defending themselves.

6. **The Complexity of the Law** – The law is so complex now due to decades worth of law and order amendments to the Criminal laws that it is absolutely brazen to now take away the right to costs which are necessary to incur to defend oneself in most cases. To be charged with an offence can be financially devastating, devastating to family units and relationships and can result in loss of employment, all on the basis of allegations, which if defeated are very hard to remedy. No government should be responsible for making that position even harder for those who succeed in defending their charges.

This particular amendment is without any justification which may well explain why it formed part of the budgetary process rather than the normal procedures that would apply to such a significant amendment to citizen's rights. ALA remains completely opposed to Part 5 of this Bill.

I would be happy to answer any further questions.

Kind Regards,
AUSTRALIAN LAWYERS ALLIANCE



A J KERIN
(SA President)

Email : Anthony.Kerin@johnstonwithers.com.au



THE LAW SOCIETY OF SOUTH AUSTRALIA

16 June 2011

Government seeks to deny successful defendants prosecution costs

Under the guise of what is perceived to be a significant cost impost to the South Australian Police, the State Government has as part of its Budget legislation introduced a Bill into the Parliament in which it seeks to deny a defendant who has successfully defended a police prosecution in the Magistrates Court, their costs.

As the law currently stands, the Magistrate has a discretion to award costs in favour of a successful party and the ordinary principle is that if a defendant successfully defends a police prosecution they are likely to be awarded their costs. This has resulted in an estimated \$2.8M being awarded this financial year. This is despite SAPOL recording a successful conviction rate of 82.5%.

The Law Society President, Ralph Böning, has said

"Introducing such a proposal through the Budget process without consultation with the legal profession is outrageous. To deny a successful party their costs goes against all ordinary principles of justice."

Further

"If \$2.8M is the difference between SAPOL and the Government in this State being able to manage its affairs, then this State is certainly on the brink of financial disaster. To seek to legislate away a successful party's rights through the budget process is legislation through the "back door"."

The net effect of this proposal is to potentially deny parties the ability to defend police prosecutions and therefore to deny justice at the bottom end of the scale.

Media Contacts: Law Society President, Ralph Böning
Tel: 8229 0227
Mob: 0417 851 848

124 Waymouth Street,
Adelaide, South Australia, 5000
GPO Box 2066, Adelaide,
South Australia, 5001; DX 333
• Phone 08 8229 0222
• Fax 08 8231 1929
www.lawsocietysa.asn.au

The Law Society of South Australia provides professional services, resources, support and benefits to its members and the legal profession in general. It undertakes community education concerning the law and the legal profession and engages in activities designed to improve access to justice.

MEDIA RELEASE

ABOLITION OF SUMMARY COSTS ERODES RIGHTS OF INNOCENT – ALA

Thursday 16 June, 2011

Innocent people in South Australia who are acquitted will lose the right to claim costs associated with defending themselves in court, if a bill to remove that right, as part of supply legislation, gets up before parliament next week.

Part 5 of the *Statutes Amendment (Budget 2011) Bill 2011*, is an amendment of *Summary Procedure Act 1921* and poses deep concern for The Australian Lawyers Alliance (ALA).

"It is extremely important that the rights of those acquitted of offences, or where charges are dismissed, are retained," ALA SA president, Tony Kerin, said today.

Mr Kerin said as the law now stands, the court has an unfettered discretion to award costs, and usually does so, following a failed police prosecution," he said.

"But with the amendment, the court's discretion is greatly removed and even diminishes and erodes the right to silence and the presumption of innocence with a subset of factors that must be met to receive court costs."

If this bill gets up, it will be a sorry day for the rights of the innocent in this state, which is all of us – until found guilty," Mr Kerin said.

He said it must be remembered that for some people to adequately defend themselves in court, they must not only pay for legal advice and court costs, but, for some, relinquish employment income while fighting their cases.

"Most are also put through great emotional and psychological pressures, which can impact on family and result in future financial pressures to undo some of the damage created by failed prosecutions," Mr Kerin said.

"The government cannot be allowed to take away the fundamental right to costs associated with accused people defending their cases - police prosecutions need to be kept accountable," he said.

Details: Australian Lawyers Alliance, public affairs manager, Mandy Wyer, 0418 270 656 or SA president, Tony Kerin: 0417 809 579.

House of Assembly—No 117

As laid on the table and read a first time, 9 June 2011

South Australia

Statutes Amendment (Budget 2011) Bill 2011

A BILL FOR

An Act to amend the *First Home Owner Grant Act 2000*, the *Liquor Licensing Act 1997*, the *Statutes Amendment (Budget 2010) Act 2010* and the *Summary Procedure Act 1921*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *First Home Owner Grant Act 2000*

- 4 Amendment of section 3—Definitions
- 5 Amendment of section 13A—Special eligible transactions
- 6 Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012
- 7 Insertion of section 18BAB
18BAB Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013
- 8 Amendment of section 18BB—Market value of homes
- 9 Amendment of section 18C—Amount of grant must not exceed consideration
- 10 Transitional provision

Part 3—Amendment of *Liquor Licensing Act 1997*

- 11 Insertion of section 50A
50A Annual fees
- 12 Amendment of section 53—Discretionary powers of licensing authority
- 13 Insertion of section 59A
59A Licence fee payable on grant of licence
- 14 Amendment of section 138—Regulations
- 15 Transitional provision

Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

- 16 Repeal of sections 60 and 61
- 17 Repeal of section 63

Part 5—Amendment of *Summary Procedure Act 1921*

- 18 Substitution of section 189
189 Costs generally
189A Costs payable by Crown in certain criminal proceedings
189B Costs payable by defendant in certain criminal proceedings
189C Costs in preliminary examination
189D Costs against complainant in proceedings for restraining order
189E Costs—delay or obstruction of proceedings
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Budget 2011) Act 2011*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.
- (2) Part 2 will be taken to have come into operation on 10 June 2011.

5 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *First Home Owner Grant Act 2000*

4—Amendment of section 3—Definitions

10 Section 3—after the definition of *consideration* insert:

contract for an "off-the-plan" purchase, of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of a subdivision of land;

5—Amendment of section 13A—Special eligible transactions

15 Section 13A(8)—delete subsection (8)

6—Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012

- (1) Section 18BA(1)—after "17 September 2010" insert:
but before 1 July 2012

20 (2) Section 18BA(1)—after paragraph (c) insert:

and

- (d) in the case of an eligible transaction with a commencement date that is on or after 10 June 2011—

25 (i) if the eligible transaction is a comprehensive home building contract for a new home—

(A) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

30 (B) the contract states that the eligible transaction must be completed within 18 months after the laying of the foundations for the home is commenced or, in any other case, the eligible transaction is completed within 18 months after the laying of the foundations for the home is commenced; and

35 (ii) if the eligible transaction is the building of a new home by an owner-builder—the transaction is completed within 18 months after its commencement date; and

(iii) if the eligible transaction is a contract for an "off-the-plan" purchase of a new home—

(A) the contract states that the eligible transaction must be completed on or before 31 December 2013; or

(B) in any other case, the eligible transaction is completed on or before that date.

(3) Section 18BA—after subsection (2) insert:

(2a) The Commissioner may, in a particular case, if he or she considers there are proper reasons for doing so, extend the time within which an eligible transaction must be completed under this section.

7—Insertion of section 18BAB

After section 18BA insert:

18BAB—Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013

(1) Subject to this section, the amount of a first home owner grant under section 18 will be increased by an amount under this section (the *first home bonus grant*) if—

(a) the commencement date of the eligible transaction is on or after 1 July 2012 but before 1 July 2013; and

(b) the eligible transaction is—

(i) a contract for the purchase of a new home; or

(ii) a comprehensive home building contract for a new home; or

(iii) the building of a new home by an owner builder; and

(c) the market value of the home to which the eligible transaction relates is less than \$450 000; and

(d) in the case of an eligible transaction that is a comprehensive home building contract for a new home—

(i) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

(ii) the contract states that the eligible transaction must be completed within 18 months after the laying of the foundations for the home is commenced or, in any other case, the eligible transaction is completed within 18 months after the laying of the foundations for the home is commenced; and

(e) in the case of an eligible transaction that is the building of a new home by an owner-builder—the transaction is completed within 18 months after its commencement date; and

(f) in the case of an eligible transaction that is a contract for an "off-the-plan" purchase of a new home—

(i) the contract states that the eligible transaction must be completed on or before 31 December 2014; or

(ii) in any other case, the eligible transaction is completed on or before that date.

(2) The amount of the first home bonus grant under this section is as follows:

(a) if the market value of the home to which the eligible transaction relates does not exceed \$400 000—\$4 000;

(b) if the market value of the home to which the eligible transaction relates exceeds \$400 000 (but is less than \$450 000)—an amount calculated in accordance with the following formula:

$$A = B - \left(\frac{C (D - E)}{100} \right)$$

where—

A is the amount of the first home bonus grant

B is \$4 000

C is 8

D is the market value of the home to which the eligible transaction relates, rounded down to the nearest \$100

E is \$400 000.

(3) The Commissioner may, in a particular case, if he or she considers there are proper reasons for doing so, extend the time within which an eligible transaction must be completed under this section.

8—Amendment of section 18BB—Market value of homes

Section 18BB(1)—delete "and 18BA" and substitute:

, 18BA and 18BAB

9—Amendment of section 18C—Amount of grant must not exceed consideration

Section 18C—delete "or 18BA" and substitute:

, 18BA or 18BAB

10—Transitional provision

(1) If—

(a) a person has, before the day on which this Act is assented to by the Governor, received a payment under section 18BA of the *First Home Owner Grant Act 2000* in respect of an eligible transaction with a commencement date that is on or after 10 June 2011; and

(b) the person is not entitled to the payment under section 18BA as amended by section 6 of this Act,

the Commissioner may recover the amount of the payment from the person as a debt due to the Crown.

(2) Terms used in subsection (1) that are defined in the *First Home Owner Grant Act 2000* have the same respective meanings as in that Act.

Part 3—Amendment of *Liquor Licensing Act 1997*

11—Insertion of section 50A

After section 50 insert:

50A—Annual fees

(1) A licensee (including the holder of a licence that has been suspended) must, in each year, pay to the Commissioner an annual fee in accordance with the regulations.

(2) Without limiting the matters that may be dealt with in the regulations, the regulations may—

(a) fix the day of the month on or before which the fee is to be paid in each year; and

(b) fix the period of 12 months (the *annual fee period*) in respect of which the fee is to be paid; and

(c) provide for the fee to be determined by reference to the class of licence or business conducted under the licence, the trading hours authorised by the licence or any other factor and for a matter to be determined according to the discretion of the Commissioner; and

(d) provide for transitional arrangements if the date for payment or the annual fee period is to be varied, including by providing for the payment of 2 fees within the same year for the purposes of the transition to a different date for payment and for an annual fee period that is longer or shorter than 12 months for the purposes of the transition to a different annual fee period.

- 5
- (3) If the trading hours or conditions of a licence are varied, or circumstances vary, in respect of trade in liquor during an annual fee period such that the annual fee paid in respect of the period is less than the annual fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the annual fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice.
- 10
- (4) If a licensee fails to pay the annual fee in accordance with the regulations or to pay an amount in accordance with subsection (3), the Commissioner may, by written notice, require the person to make good the default as specified in the notice and, in addition, pay to the Commissioner the amount prescribed as a penalty for default.
- 15
- (5) If a licensee fails to comply with a notice under subsection (4), the Commissioner may, by further written notice, suspend the licence until the notice has been complied with.
- (6) This section does not apply in relation to a limited licence.

12—Amendment of section 53—Discretionary powers of licensing authority

Section 53(3)—after "application" insert:

20 or the payment of fees relating to the grant of the application

13—Insertion of section 59A

After section 59 insert:

59A—Licence fee payable on grant of licence

- 25
- (1) On the grant of a licence, a licence fee becomes payable to the Commissioner by the licensee.
- (2) In the case of a limited licence—
- 30
- (a) the amount of the licence fee is to be determined in accordance with the regulations; and
- (b) the licence fee is payable before the commencement of the special occasion or the first in the series of special occasions to which the licence relates; and
- 35
- (c) the regulations may provide for the licence fee to be determined by reference to the class of special occasion or the series of special occasions to which the licence relates or any other factor and for a matter to be determined according to the discretion of the Commissioner; and
- 40
- (d) if the holder of the licence fails to pay the licence fee before the commencement of the special occasion or the first in the series of special occasions to which the licence relates, the licence is cancelled.

(3) In the case of a licence other than a limited licence—

- 5
- (a) the amount of the licence fee is a proportion of the annual fee for the licence, being the proportion that the number of months in the period from the grant of the licence until the end of the current annual fee period bears to 12 months (with part of a month being counted as a full month); and
- (b) the licence fee is payable within 28 days after the grant of the licence; and
- 10
- (c) if the trading hours or conditions of the licence are varied, or circumstances vary, in respect of trade during the current annual fee period such that the licence fee paid is less than the licence fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the licence fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice; and
- 15
- (d) if the licensee fails to pay the licence fee, or an amount under paragraph (c), within the period allowed, the licence is suspended until the fee or amount is paid; and
- 20
- (e) the Commissioner must notify the licensee in writing of the suspension of the licence.

(4) In this section—

annual fee period—see section 50A.

14—Amendment of section 138—Regulations

25 Section 138—after subsection (4) insert:

- (5) A regulation may provide for the Commissioner to waive, reduce or refund fees payable under this Act.

15—Transitional provision

30 (1) The regulations first made under section 50A as inserted in the *Liquor Licensing Act 1997* by this Act may provide—

- (a) for the first annual fee period to be longer or shorter than 12 months; and
- (b) for the payment of 2 fees within the first 12 months (so that licensees have a longer period within which to make the first payment); and
- 35 (c) for the first annual fee period to commence at any time on or after 1 July 2011.

(2) If, after the day on which this Act is assented to by the Governor and before the day fixed by the Commissioner for the payment of the first annual fee, an application is made under the *Liquor Licensing Act 1997* for a reduction in trading hours authorised by a licence so that, following the reduction, the licence authorises only the hours during which it is proposed the licensed premises will be open for trade—

40

- (a) no fee is payable for the application; and
- (b) section 52 of the *Liquor Licensing Act 1997* does not apply to the application.

Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

16—Repeal of sections 60 and 61

Sections 60 and 61—delete the sections

5 **17—Repeal of section 63**

Section 63—delete the section

Part 5—Amendment of *Summary Procedure Act 1921*

18—Substitution of section 189

Section 189—delete section 189 and substitute:

10 **189—Costs generally**

Subject to sections 189A to 189E (inclusive), the Court may award such costs for or against a party to proceedings as the Court thinks fit.

189A—Costs payable by Crown in certain criminal proceedings

15 (1) If, in proceedings for an offence prosecuted by a police officer—

- (a) the Court dismisses the proceedings; or
- (b) the proceedings are withdrawn,

the Court may only make an order for costs in favour of the defendant if the Court is satisfied that it is proper that the order should be made.

20 (2) In deciding whether it is proper to make an order for costs in favour of the defendant, the Court must take into account all relevant circumstances, including, for example—

- 25 (a) whether the prosecution of the offence was conducted in good faith; and
- (b) whether there was a failure to take appropriate steps to investigate a matter coming to, or within, the knowledge of the prosecution; and
- 30 (c) whether the investigation into the offence was conducted in an appropriate way; and
- (d) whether the order of dismissal (in the case of proceedings dismissed by the Court) was made on technical grounds and not on a finding that there was insufficient evidence to convict or make an order against the defendant; and
- 35 (e) whether the defendant brought suspicion on himself or herself by conduct engaged in after the events constituting the commission of the offence; and

P I
Pres M I

(f) whether the defendant unreasonably declined an opportunity before a charge was laid—

- (i) to explain the defendant's version of events; or
- (ii) to produce evidence likely to exonerate the defendant,

and the explanation or evidence could have avoided a prosecution; and

(g) whether the defendant conducted the defence in a way that prolonged the proceeding unreasonably; and

(h) whether the defendant was acquitted on a charge, but convicted on another.

(3) Subject to subsection (4), in deciding the amount of costs to be awarded under this section, the Court may award costs only—

(a) if the regulations prescribe a scale of costs for the purposes of this section—

- (i) for an item allowed under the prescribed scale of costs; and
- (ii) up to the amount allowed for the item under the prescribed scale; or

(b) if no scale of costs is prescribed in accordance with paragraph (a)—

- (i) for an item allowed under the scale of costs prescribed in relation to criminal proceedings under section 49(1)(e) of the *Magistrates Court Act 1991*; and
- (ii) up to the amount allowed for the item under that scale.

(4) The Court may allow a higher amount for costs if the Court is satisfied that the higher amount is just and reasonable having regard to the special difficulty or complexity of the case, or where the Court finds that the prosecution has not acted in good faith in bringing the proceedings.

189B—Costs payable by defendant in certain criminal proceedings

(1) This section does not apply to—

- (a) a defendant who enters a written plea of guilty in accordance with section 57A; or
- (b) an enforcement procedure under section 13 of the *Expiation of Offences Act 1996*.

R to Sec.

- 5
- (2) If the Court finds a defendant guilty in proceedings for an offence prosecuted by a police officer, the Court must, subject to subsection (3), make an order for costs against the defendant for—
- (a) if an amount is prescribed by regulation for the purposes of this subsection—the prescribed amount; or
- (b) if no such amount is prescribed—\$100.
- (3) If the prosecution agrees that an order under subsection (2) should not be made, the Court may instead make some other order as to costs (or may make no order as to costs).

10 **189C—Costs in preliminary examination**

Despite any other provision of this Part, costs will not be awarded against a party to a preliminary examination of an indictable offence unless the Court is satisfied that the party has unreasonably obstructed the proceedings.

15 **189D—Costs against complainant in proceedings for restraining order**

- 20
- (1) Despite any other provision of this Part, costs will not be awarded against a complainant in proceedings for a restraining order unless the Court is satisfied that the complainant has acted in bad faith or unreasonably in bringing the proceedings.
- (2) In this section—

complainant, in relation to a restraining order, includes an applicant for a restraining order;

25 *restraining order* includes a domestic violence restraining order under the *Domestic Violence Act 1994* and an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

189E—Costs—delay or obstruction of proceedings

- 30
- (1) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—
- (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
- (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
- 35 (c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.

- 5
- (2) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the Court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.
- (3) If proceedings are unreasonably obstructed by a party or a witness, or proceedings are delayed through the failure of a party or a witness to appear before the Court when required to do so, the Court may make either or both of the following orders:
- 10
- (a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;
- (b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the obstruction or delay.
- 15
- (4) Before making an order under subsection (1), (2) or (3), the Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.
- 20
- (5) A person against whom an order for costs is made under subsection (1), (2) or (3) has the same rights of appeal as a party to a civil action.