

## Magistrates' Court (Costs) Bill

### EXPLANATORY MEMORANDUM

*Clause 1.* states the purposes of the Bill.

*Clause 2.* is a commencement provision.

*Clause 3.* provides that in this Act the **Magistrates' Court Act 1989** is the Principal Act.

*Clause 4.* inserts definition of "public official" into section 3 of the **Magistrates' Court Act 1989**. A "public official" is a member of the police force or person appointed by or under an Act whose functions or duties include the commencement or conduct of criminal proceedings.

*Clause 5.* inserts into section 131 of the **Magistrates' Court Act 1989** a new sub-section which provides that a Magistrates' Court may not award costs to a successful defendant in criminal proceedings except in certain circumstances. The clause sets out those circumstances.

*Clause 6.* inserts a new section 131A after section 131 of the **Magistrates' Court Act 1989**.

*Sub-section (1)* provides that where the Court makes an order for costs against a public official other than one employed by a local council, it must grant to the defendant a certificate in respect of those costs.

*Sub-section (2)* provides that the certificate entitles the defendant to be paid the costs out of consolidated revenue and discharges the public official from liability for payment of costs under the order.

*Sub-section (3)* provides that if the Court grants a certificate and is satisfied that the public official acted in bad faith or with gross unreasonableness or with gross impropriety, it must order that the public official pay to the State the amount of costs ordered.

*Sub-section (4)* provides that the Court must give reasons for making an order under sub-section (3).

*Sub-section (5)* provides that an amount ordered to be paid to the State under sub-section (3) is recoverable as a civil debt.

*Sub-section (6)* provides that a certificate in respect of costs awarded against a public official and an order that the public official reimburse the State are suspended during any appeal period and if an appeal is instituted, until the appeal is determined unless the certificate or order are varied or revoked on appeal.

*Clause 7.* is a statute law revision amendment.

*Clause 8.* provides that the amendments made by this Bill which relate to costs in a criminal proceeding apply to an order for costs made on or after their commencement even if the proceeding was commenced before that commencement.

