

COSTS (Topic 13)

Costs is the amount that a party may recover from their opponent in litigation for reimbursement of particular expenses in litigation. It deters vexatious claims or defences, discourages incurring unnecessary costs, and encourages settlement (VLRC 2008; ALRC 1995).

- They are not the same as remedies.
- It is money that a party may recover from an opponent in litigation for reimbursement of particular expenses incurred in litigation
- Unrepresented parties cannot claim for time they have spent (unless they are solicitors)
- **General Rule:** Loser reimburses some of the legal expenses incurred by the other party in conducting the litigation

DUTIES & OBLIGATIONS

- S 24 CPA: Duty to ensure costs are reasonable & proportionate to complexity/importance of issues in dispute and the amount in dispute (*Yarra v Oswal* – had multiple senior & junior counsels for an interlocutory order. Court raised on its own motion, the over-representation and CPA obligations)
- S 11 CPA: Duty applies to all aspects and conduct of case, and are owed by parties, practitioners, law firms, insurers, litigation funders (*s 10(1)*). **ALSO REMEMBER s 7 CPA**

Court powers to costs under the CPA

- s 28(2): in exercising its discretion regarding costs, the Court may take account of breaches of OOs
- s 29(1) accordingly, the Court may (but is not limited to) make an order that the contravener pay some or all of resulting costs
- S 65c(1): court may make any orders as to costs it considers appropriate, to further the overarching purpose in s 7
- S 65C(2)(d): court may cap a party's liability for costs, if appropriate to further the overarching purpose (eg public interest groups)
- S 46: court may take into account failure to comply with certificate reqs when deciding costs

Costs orders against lawyers

- Courts have inherent power to issue costs orders if lawyers commence unsupported allegations, commence without authority, or conduct cases which are an abuse of process
- Under r 63.23:
 - o (1) If costs improperly/unreasonable incurred by the lawyer, or wasted due to a failure to act with reasonable competence or expedition, Court may order the lawyer to pay any or all costs (own fees, client's or other parties' costs)
 - o (2) lawyer fails to act with reasonable competence and expedition, where any application in or trial of a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, by reason of the failure of the solicitor to
 - (a) attend in person or by proper representative
 - (b) file any document that ought to have been filed
 - (c) lodge or deliver any doc for use of the court
 - (d) be prepared with any proper evidence or account; or (e) otherwise
 - o (3) court should not make an order under (1) without giving solicitor a reasonable oppo to be heard. Applies to barristers and solicitors (7)
- *White Industries*: lawyer forced to pay indemnity costs for issuing proceedings without proper basis. Also *Yarra* – courts can look into the circumstances on their own motion, and make orders