

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



THE AUSTRALIAN INSTITUTE FOR PROGRESS LTD V THE ELECTORAL COMMISSION OF QUEENSLAND & ORS (NO 2) [2020] QSC 174

Supreme Court of Queensland, Applegarth J, 20 June 2020

Whether an unsuccessful litigant is entitled to a favourable costs order because the litigation is of public interest

Key words: Costs, Costs Follow The Event, Exception To Rule, Public Interest Litigation, Private Interest vs Public Interest

1. The Australian Institute for Progress Ltd (AIP) had failed to have declarations granted in its favour in the primary hearing of this case. This was a costs hearing, in which the AIP, despite having failed in its case, sought to have all its costs paid by the Electoral Commission of Queensland (ECQ).
2. The ground for this claim, which goes against the usual rule for the awarding of costs, that costs follow the event, was that the litigation was public interest litigation providing useful commentary on the [Human Rights Act 2019](#) (Qld) and the [Electoral Act 1992](#) (Qld).
3. The general rule that costs should follow the event is contained in r 681 of the [Uniform Civil Procedure Rules 1999](#) (Qld), but that rule also provides that costs can be at the discretion of the court. However, good reason is required to depart from the general rule that costs follow the event, a rule that is grounded in public policy. The usual exceptions to the rule are that there are special or extraordinary circumstances present in the event of an award of nominal damages, or if the conduct of the successful party disentitles it to the usual order for costs.
4. In this case, the ECQ was entirely successful in the primary hearing. However, was this some sort of public interest litigation? The court agreed that the public and the parties 'may have benefited in some way by whatever clarification [the court's] judgment gave on issues of statutory interpretation' (at [33]). However, the courts' view was that terms such as 'public interest' and 'public interest litigation' 'may lack precision in a context like this' (at [34]).
5. The term 'public interest litigation' suggests that the public, or at least a section of it, has an interest in the litigation which is being pursued. It prompts an inquiry whether the unsuccessful litigant pursued the interests of the public, rather than its own private interests, in bringing the litigation.

6. What was the case here? The AIP's objects include a commitment to political freedom. The stated purpose of the main proceedings was to ensure that property developers (who are prohibited donors to electoral parties) were not unnecessarily deterred from making donations to the AIP, which is not a political party, and to avoid the risk that this might inhibit the AIP's participation in forthcoming elections.
7. Therefore, the court said that the litigation had both a public interest element and a concern to protect the applicant's own private interests, but held that the public interest element was not of sufficient value to outweigh the private interest involved (at [47]-[48]):

Insofar as the proceeding sought to challenge the views or conduct of a public authority by seeking a judicial interpretation of statutory provisions, this is a common feature of litigation against government entities which involve issues of statutory interpretation. While the litigation may have served some broader public interest, it was pursued so as to advance the private interests of the AIP. Any clarification of the statute for the benefit of the public was a consequence of the AIP's unsuccessful pursuit of a declaration that sought to insulate all of its activities from the reach of the relevant provisions...Any incidental public benefit achieved by rejecting most of the AIP's arguments on issues of statutory...is not, in my view, a sufficient reason to depart from the ordinary rule that costs follow the event.

8. Therefore, the AIP was ordered to pay the ECQ's costs.

IMPLICATIONS



Refer [The Australian Institute for Progress Ltd v The Electoral Commission of Queensland & Ors](#) [2020] QSC 54 as to whether gifts from prohibited donors can be made to a third party circumventing the prohibition on prohibited donors to the campaigns of political parties and candidates in Queensland

VIEW THE CASE



This case may be viewed at <https://www.queenslandjudgments.com.au/case/id/344726>

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