

## OFFICIAL PROSECUTIONS (DEFENDANTS' COSTS).

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No. 46 of 1973.

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**AN ACT to amend the law relating to the Payment of Costs to Defendants in Official Prosecutions and for incidental purposes.**

*[Assented to 6th November, 1973.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Official Prosecutions (Defendants' Costs) Act, 1973.* Short title.

2. This Act shall come into operation on a date to be fixed by proclamation. Commencement.

Application.

3. (1) Except as otherwise provided by this section, this Act applies notwithstanding the provisions of or under any other Act, or of or under any rule of court practice.

"this Act",  
see s. 4 of  
Act No. 30  
of 1918.

(2) To the extent of any inconsistency between a provision of this Act and a provision of or under any other Act, or of or under any rule of court practice, the provision which is more favourable to the defendant prevails.

(3) This Act binds the Crown.

Interpre-  
tation.

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

"appeal" means an appeal against a decision of a Summary Court given in an official prosecution;

"Appeal Court" means a Court hearing an appeal against a decision of a Summary Court given in an official prosecution;

"costs" means any expenses that—

(a) are properly incurred by a defendant in an official prosecution; and

(b) are due and payable, or paid, by the defendant to another person or as Court fees;

"Court" includes a Summary Court and an Appeal Court;

"defendant" means a person charged with an offence in an official prosecution;

"official prosecution" means proceedings in a Summary Court against a person charged with an offence on a complaint by a public official acting or purporting to act by virtue of his office, and includes proceedings on appeal therefrom;

“public official” means a Minister of the Crown, a person employed in the Public Service of the State, a member of the Police Force, or a person employed by a municipality within the meaning of the Local Government Act, 1960 or any other statutory body and includes any person acting as agent of or under the instructions of such a person or body;

“section” means a section of this Act; and

“Summary Court” means a Court of Petty Sessions, or a Children’s Court established under the Child Welfare Act, 1947.

(2) A defendant—

(a) is successful if the charge is dismissed, withdrawn, or struck out, or a conviction thereon is quashed;

(b) is partly successful if—

(i) he is convicted of a lesser offence than that with which he was charged; or

(ii) he is charged with several offences on the same complaint and is successful in respect of one or some of them.

5. (1) Subject to this Act, a successful defendant is entitled to his costs.

Successful  
defendant  
entitled to  
his costs.

(2) Where a defendant is successful by reason of a decision of the Summary Court only, the Summary Court shall make an order as to the amount of his costs therein but the defendant is not entitled to those costs unless and until the time for appeal therefrom has expired or an appeal therefrom is resolved in his favour.

(3) Where a defendant is successful by reason of a decision of the Appeal Court, the Appeal Court shall make an order as to the amount of his costs in the Appeal Court.

(4) Where a defendant is successful by reason of the Appeal Court reversing a decision of the Summary Court, the Appeal Court shall make an order as to the amount of the costs in the Appeal Court and in the Summary Court.

(5) The amount of the costs ordered, other than Court fees, shall be in accordance with the scale prescribed under this Act but nevertheless the Court may make an order for payment of costs including an amount in excess of the amount for any item in that scale if the Court is satisfied that having regard to the special difficulty, complexity, or importance of the case, the payment of greater costs for that item is desirable.

**Saving.**

6. The Court may order that a successful defendant is not entitled to his costs or part thereof if—

- (a) the charge against him is dismissed under section 669 of The Criminal Code or under section 26 of the Child Welfare Act;
- (b) he has done or caused to be done or has omitted or caused to be omitted something (other than an act or omission the subject of the charge) which was unreasonable in the circumstances and which contributed to the institution or continuation of the proceedings; or
- (c) he has done or caused to be done or has omitted or caused to be omitted something during the course of proceedings or in the conduct of the defence or appeal calculated to prolong the proceedings unnecessarily or cause unnecessary expense.

**Discretionary power to award costs to a partly successful defendant.**

7. (1) Subject to this Act, where a partly successful defendant satisfies the Court that he incurred additional costs by reason of being charged with an offence or offences in respect of which he was successful, the Court may order that he is entitled to those costs.

(2) Before exercising the discretion conferred by subsection (1) of this section, the Court may have regard to any of the circumstances referred to in paragraphs (a) to (c) inclusive of section 6 that exist in the case of the partly successful defendant.

(3) Where the Court makes an order pursuant to subsection (1) of this section, subsections (2) to (5) inclusive of section 5 apply to and in relation to the order with such modifications as are necessary.

8. The Court may adjourn to Chambers the question of costs, or the amount thereof, under this Act to enable the making of submissions and the tendering of evidence, including affidavit evidence, on that question.

Submissions  
and  
evidence  
on costs.

9. Where costs are ordered under this Act—

Payment of  
costs.

- (a) if the public official a party to the proceedings is a Minister of the Crown, a person employed in the Public Service of the State, a member of the Police Force, or any other person acting as agent of or under the instructions of such a person, the Clerk or Registrar, as the case requires, of the Court shall give to the defendant a certificate signed by the Clerk or sealed with the Seal of the Court, as the case requires, showing the amount of the costs ordered and on production of the certificate to the Treasurer, the defendant shall be paid such costs out of Consolidated Revenue; or
- (b) if the public official a party to the proceedings is a person employed by a municipality within the meaning of the Local Government Act, 1960 or any other statutory body, or is any other person acting as agent

of or under the instructions of such a person or body, the costs shall be ordered against that body and shall be paid by it to the defendant, and shall be recoverable as a civil debt.

Regulations.

10. The Governor may make regulations prescribing a scale of costs for the purposes of this Act.

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