

Western Australia

Official Prosecutions (Accused's Costs) Act 1973

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Official Prosecutions (Accused's Costs) Act 1973

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Official Prosecutions (Accused's Costs) Act 1973

An Act to amend the law relating to the Payment of Costs to Defendants in Official Prosecutions and for incidental purposes.

1. Short title

This Act may be cited as the *Official Prosecutions (Accused's Costs) Act 1973*¹.

[Section 1 amended by No. 84 of 2004 s. 82.]

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation.¹

3. Application

- (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.
- (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 accused prevails.
- (3) This Act binds the Crown.

[Section 3 amended by No. 84 of 2004 s. 82.]

4. Interpretation

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

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“accused” means a person charged with an offence in an official prosecution;

“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 an accused in an official prosecution; and
- (b) are due and payable, or paid, by the accused to another person or as Court fees;

“Court” includes a Summary Court and an Appeal Court;

“official prosecution” means proceedings in a Summary Court against a person charged with an offence 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 local government 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 the Magistrates Court or the Children’s Court.

(2) An Accused —

- (a) subject to paragraph (c), is successful if —
 - (i) he is acquitted of the charge, other than on account of unsoundness of mind;
 - (ii) he is discharged from the charge under section 128(2) or (3) of the *Criminal Procedure Act 2004*;

- (iii) the charge is dismissed for want of prosecution;
or
- (iv) if his conviction of the charge is set aside;
- (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 in the one prosecution notice and is successful in respect of one or some of them;
- (c) is not successful if the charge is of an indictable offence and is dismissed for want of prosecution by the Summary Court —
 - (i) if section 5 of *The Criminal Code* applies to the charge — before the Summary Court decides under that section that the charge is to be tried on indictment; or
 - (ii) otherwise — before the Summary Court commits him for trial or sentence on the charge.

[Section 4 amended by No. 49 of 1989 s.55; No. 14 of 1996 s.4; No. 59 of 2004 s. 141; No. 84 of 2004 s. 56, 80, 82 and 86.]

5. Successful accused entitled to costs

- (1) Subject to this Act, a successful accused is entitled to his costs.
- (2) Where an accused 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 an accused 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.

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- (4) Where an accused 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 costs ordered, other than Court fees, shall be in accordance with the scale fixed from time to time by a legal costs determination (as defined in the *Legal Practice Act 2003*).

[Section 5 amended by No. 29 of 1997 s. 4; No. 65 of 2003 s. 54; No. 84 of 2004 s. 82.]

6. Court may revoke or reduce accused's entitlement to costs

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

- (a) the Court, having found the accused guilty, disposes of the charge without recording a conviction;
- (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.

[Section 6 amended by No. 7 of 1974 s. 3; No. 49 of 1988 s. 56; No. 15 of 1991 s. 21; No. 78 of 1995 s. 96; No. 84 of 2004 s. 82.]

7. Partly successful accused may be awarded costs

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

[Section 7 amended by No. 84 of 2004 s. 82.]

8. Question of costs may be adjourned to Chambers

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.

9. Payment of costs ordered

Where costs are ordered under this Act —

- (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 accused 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 the Consolidated Fund; or
- (b) if the public official a party to the proceedings is a person employed by a local government 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.

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*[Section 9 amended by No. 6 of 1993 s.13; No. 14 of 1996 s.4;
No. 84 of 2004 s. 82.]*

[10. Repealed by No. 65 of 1987 s. 41.]

Notes

¹ This is a compilation of the *Official Prosecutions (Accused Costs) Act 1973* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Official Prosecutions (Defendants' Costs) Act 1973</i> ²	46 of 1973	6 Nov 1973	25 Jan 1974 (see s. 2 and <i>Gazette</i> 25 Jan 1974 p. 179)
<i>Official Prosecutions (Defendants' Costs) Act Amendment Act 1974</i>	7 of 1974	19 Sep 1974	8 Nov 1974 (see s. 2 and <i>Gazette</i> 8 Nov 1974 p. 4973)
<i>Acts Amendment (Legal Practitioners Costs and Taxation) Act 1987</i> , Part XIV	65 of 1987	1 Dec 1987	12 Feb 1988 (see s. 2(2) and <i>Gazette</i> 12 Feb 1988 p. 397)
<i>Acts Amendment (Children's Court) Act 1988</i> , Part 8	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991</i> , section 21	15 of 1991	21 Jun 1991	9 Aug 1991 (see s. 2(2) and <i>Gazette</i> 9 Aug 1991 p. 4101)
<i>Financial Administration Legislation Amendment Act 1993</i> , section 13	6 of 1993	27 Aug 1993	1 Jul 1993 see s. 2(1)
<i>Local Government (Consequential Amendments) Act 1996</i> , section 4	14 of 1996	28 Jun 1996	1 Jul 1996 see s. 2
<i>Sentencing (Consequential Provisions) Act 1995</i> , Part 57	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Acts Amendment (Legal Costs) Act 1997</i> , Part 3	29 of 1997	26 Sep 1997	26 Sep 1997 (see s. 2)

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 54</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 Pt. 12, s. 80, 82 and 86</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

² Now known as the *Official Prosecutions (Accused's Costs) Act 1973* short title changed (see note under s. 1).