

Western Australia

**Official Prosecutions  
(Defendants' Costs) Act 1973**

**Reprinted as at 19 February 1999**



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## Official Prosecutions (Defendants' Costs) Act 1973

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### Notes



Western Australia

## **Official Prosecutions (Defendants' 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 (Defendants' Costs) Act 1973*<sup>1</sup>.

**2. Commencement**

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

**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 defendant prevails.
- (3) This Act binds the Crown.

**4. Interpretation**

(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 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 a Court of Petty Sessions, or the Children’s Court.

(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.

*[Section 4 amended by No. 49 of 1989 s.55; No. 14 of 1996 s.4.]*

**5. Successful defendant entitled to costs**

- (1) Subject to this Act, a successful defendant is 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 fixed from time to time by a determination under section 58W of the *Legal Practitioners Act 1893*, 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.

*[Section 5 amended by No. 29 of 1997 s.4.]*

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

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

- (a) the Court, having found the defendant 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.]*

**7. Partly successful defendant may be awarded costs**

- (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), 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), subsections (2) to (5) inclusive of section 5 apply to and in relation to the order with such modifications as are necessary.



**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 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 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.

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

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 Repealed by No. 65 of 1987 s.41.]*

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## Notes

<sup>1</sup> This reprint is a compilation as at 19 February 1999 of the *Official Prosecutions (Defendants' Costs) Act 1973* and includes all amendments effected by the other Acts referred to in the following Table.

### Table of Acts

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Official Prosecutions (Defendants' Costs) Act 1973</i>	46 of 1973	6 November 1973	25 January 1974 (see section 2 and <i>Gazette</i> 25 January 1974 p.179)	
<i>Official Prosecutions (Defendants' Costs) Act Amendment Act 1974</i>	7 of 1974	19 September 1974	8 November 1974 (see section 2 and <i>Gazette</i> 8 November 1974 p.4973)	
<i>Acts Amendment (Legal Practitioners Costs and Taxation) Act 1987, Part XIV</i>	65 of 1987	1 December 1987	12 February 1988 (see section 2(2) and <i>Gazette</i> 12 February 1988 p.397)	
<i>Acts Amendment (Children's Court) Act 1988, Part 8</i>	49 of 1988	22 December 1988	1 December 1989 (see section 2 and <i>Gazette</i> 24 November 1989 p.4327)	
<i>Children's Court of Western Australia Amendment Act (No. 2) 1991, section 21</i>	15 of 1991	21 June 1991	9 August 1991 (see section 2(2) and <i>Gazette</i> 9 August 1991 p.4101)	
<i>Financial Administration Legislation Amendment Act 1993, section 13</i>	6 of 1993	27 August 1993	1 July 1993, see section 2(1)	

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Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996, see section 2	
<i>Sentencing (Consequential Provisions) Act 1995, Part 57</i>	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996, p.5632)	
<i>Acts Amendment (Legal Costs) Act 1997, Part 3</i>	29 of 1997	26 September 1997	26 September 1997 (see section 2)	

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